3 Am. Jur. 2d Adverse Possession III A Refs.

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A. In General; by Whom Title May Be Acquired

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West's Key Number Digest

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3 Am. Jur. 2d Adverse Possession § 140

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§ 140. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

Trial Strategy

Acquisition of Title to Property by Adverse Possession, 39 Am. Jur. Proof of Facts 2d 261

As a general rule, all persons, artificial as well as natural, may acquire title by adverse possession.[1] A claimant to title by adverse possession must ordinarily have legal capacity to take title.[2]

The conduct of an intentional trespasser, if repeated, might ripen into prescription or adverse possession, and as a consequence, an individual landowner can lose his or her property rights to a trespasser.[3]

Adverse title may be acquired by a junior patentee against a senior patentee.[4]

A party cannot establish adverse use of his or her own property.[5]

A property owner may assert title to disputed property against neighbors under an adverse possession theory even though the property owner conveys to a third party property contiguous to, but not including, the disputed property.[6]

A condominium association may bring an adverse possession claim.[7]

Footnotes

1 Lincoln Parish School Bd. v. Ruston College, 162 So. 2d 419 (La. Ct. App. 2d Cir. 1964).

2 Salem Church of United Brethren in Christ in Baltimore County v. Numsen, 191 Md. 43, 59 A.2d 757, 4 A.L.R.2d 117 (1948).

3 Jacque v. Steenberg Homes, Inc., 209 Wis. 2d 605, 563 N.W.2d 154 (1997).

4 Dishman v. Caylor, 334 S.W.2d 921 (Ky. 1960).

5 Allen v. Nickerson, 155 P.3d 595 (Colo. App. 2006).

6 Anderson v. Anderson, 158 Wash. App. 1039, 2010 WL 4595972 (Div. 1 2010).

7 Sea Pines Condominium III Ass'n v. Steffens, 61 Mass. App. Ct. 838, 814 N.E.2d 752 (2004).

3 Am. Jur. 2d Adverse Possession § 141

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§ 141. Infant; ward or incompetent

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

An infant generally may acquire title by adverse possession.[1] A guardian's possession is deemed the possession of the ward and is admissible to prove adverse possession by the ward.[2]

An incompetent person may initiate an adverse possession if of sufficient mental capacity to assert a claim of exclusive ownership,[3] and an adverse possession begun while one is competent will not be destroyed by a subsequent adjudication of incompetency.[4]

Footnotes

1 Tubbs v. E & E Flood Farms, L.P., 13 A.3d 759 (Del. Ch. 2011); Astle v. Card, 52 R.I. 357, 161 A. 126 (1932).
As to effect of parent-child relationship, see § 170.
As to adverse possession against an infant, see § 161.
As to capacity of infants, generally, see Am. Jur. 2d, Infants §§ 30 to 38.

2 U. S. Fidelity & Guaranty Co. v. Montgomery, 226 Ala. 298, 146 So. 528 (1933); Department of Public Welfare, for Use and Ben. of Central State Hospital v. Allen, 255 Ky. 301, 74 S.W.2d 329 (1934).
As to adverse possession by guardian against ward, see § 168.
As to property of wards, generally, see Am. Jur. 2d, Guardian and Ward §§ 99 to 105.

3 Rachel v. Johnson, 230 Ark. 1003, 328 S.W.2d 87 (1959).
As to adverse possession against an incompetent person, see § 162.

4 Cathcart v. Matthews, 91 S.C. 464, 74 S.E. 985 (1912).

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3 Am. Jur. 2d Adverse Possession § 142

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§ 142. Husband and wife

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

Forms

Forms relating to tax, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

A husband and wife may acquire title to land jointly by adverse possession.[1] It is possible, at common law, for a husband and wife to commit an act of disseisin for their joint and mutual benefit.[2]

Generally, the possession of either spouse, held because of the marital rights, and not under an independent title or color of title, will inure to the benefit of the other.[3]

Where spouses possessed property adversely, and before the statutory period expired they separated and were divorced, and one spouse continued to occupy the property adversely, such spouse could tack the former joint possession to the continuing possession to make out the statutory period.[4]

An adverse possessor who seeks to append property to property that he or she holds by the entirety with his or her nonparty spouse may adequately satisfy the requirements of adverse possession individually regardless of the intent of the nonparty spouse.[5]

Footnotes

1 Preston v. Smith, 41 Tenn. App. 222, 293 S.W.2d 51 (1955).

2 Preston v. Smith, 41 Tenn. App. 222, 293 S.W.2d 51 (1955).
As to adverse possession by one spouse against other spouse, see §§ 171 to 173.

3 Howard v. Turner, 287 Ky. 206, 152 S.W.2d 589 (1941).

4 Humphreys v. Gribble, 227 S.W.2d 235 (Tex. Civ. App. Waco 1950), writ refused n.r.e., (Apr. 19, 1950).
As to tacking of possessions, generally, see §§ 70 to 79.

5 Canjar v. Cole, 283 Mich. App. 723, 770 N.W.2d 449 (2009).

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3 Am. Jur. 2d Adverse Possession § 143

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§ 143. Tenant against third person

Topic Summary | Correlation Table | References

West's Key Number Digest

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A person that is a tenant may acquire title by adverse possession to adjacent property owned by a third person.[1] Thus, a tenant is not precluded from setting up adverse possession of adjacent property which the tenant claims under a deed and which is separated from the landlord's property by a fence.[2]

Observation:

It would seem that where the possession by a tenant of land beyond the boundaries described in a lease does not inure to the benefit of the landlord, it would support a claim by the tenant to such land by adverse possession.[3]

Footnotes

1 Everett v. Culberson, 215 Ga. 577, 111 S.E.2d 367 (1959).

2 Everett v. Culberson, 215 Ga. 577, 111 S.E.2d 367 (1959).

As to adverse possession of tenant against landlord, see §§ 186 to 189.

3 Everett v. Culberson, 215 Ga. 577, 111 S.E.2d 367 (1959).

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3 Am. Jur. 2d Adverse Possession § 144

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§ 144. Cotenant against third person

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

The possession of one cotenant is presumptively the possession of all and inures to the benefit of all.[1] Where one acquires an outstanding adversary title, the acquisition inures to the benefit of a cotenant.[2] Thus, if one cotenant in possession of a jointly owned tract of land occupies and claims as part of that tract an adjoining parcel, adverse possession of the parcel must be deemed to be that of all cotenants, and therefore, adverse possession of such adjoining parcel for the statutory period will be effective to vest the title thereto in all cotenants.[3] The possession of property by one cotenant under a color of title held by all cotenants inures to the benefit of all so as to ripen title in each according to the interest of each.[4]

Footnotes

1 Mack v. Linge, 254 Iowa 963, 119 N.W.2d 897 (1963); Poenisch v. Quarnstrom, 361 S.W.2d 367 (Tex. 1962).

2 Am. Jur. 2d, Cotenancy and Joint Ownership §§ 74 to 84.
As to adverse possession by one cotenant against other cotenants, see §§ 190 to 202.
As to adverse possession by a third person against cotenants, see §§ 203 to 212.

3 Big Run Coal & Clay Co. v. Helton, 323 S.W.2d 855 (Ky. 1959).

4 Herron v. Swarts, 1960 OK 53, 350 P.2d 314 (Okla. 1960).

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3 Am. Jur. 2d Adverse Possession § 145

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§ 145. Corporation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

Forms

Forms relating to tax, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

A private corporation may acquire title by adverse possession in the same manner and to the same extent as an individual.[1] An incorporated railroad company is within the general rule and may acquire title by adverse possession for the requisite period of time of land occupied by it and used for the purpose of conducting its transportation business although generally, a railroad company acquires by adverse possession only an easement in a right of way.[2] Where a corporation possessing the power of eminent domain originally took title as a purchaser under a deed containing words purporting to convey the fee and, from the beginning, exercised acts of dominion over the land tending to show absolute ownership, there was no room for the presumption that the corporation entered or continued to hold under its power of eminent domain, and such corporation could acquire title by adverse possession.[3]

Footnotes

1 Seaboard Air Line R. Co. v. California Chemical Co., 210 So. 2d 757 (Fla. 4th DCA 1968); Todd v. Kitsap County, 101 Wash. 2d 245, 676 P.2d 484 (1984).

2 Am. Jur. 2d, Railroads §§ 48, 65, 90.
As to acquisition of title against a railroad by adverse possession, see §§ 265, 266.

3 Ontelaunee Orchards v. Rothermel, 139 Pa. Super. 44, 11 A.2d 543 (1940).

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3 Am. Jur. 2d Adverse Possession § 146

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§ 146. Corporation—Foreign corporation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

Although the cases are not in accord on the right of a foreign corporation to acquire title by adverse possession, it would seem that in any jurisdiction where the local laws permit foreign corporations to take and hold title to land, such corporation may acquire title by adverse possession.[1]Of course, where the view is taken that a foreign corporation cannot invoke the benefit of the applicable statute of limitations,[2]it is denied the right to acquire title by adverse possession to lands.[3]In jurisdictions where the rule prevails that a foreign corporation is permanently absent from the state, it may be denied the benefit of a statute of limitations governing actions for the possession of real property provided a "saving clause" tolling the statute as to nonresidents is construed as applicable to such actions.[4]Of course, if the "saving clause" is construed as not embracing nonresidents, a foreign or alien corporation does not fall within its terms, and in such cases, the corporation may have the benefit of the statute of limitations and claim land by adverse possession.[5]

Observation:

While this would be the holding irrespective of the view taken as to the presence or absence of the foreign corporation, it is expressly supported for the additional reason that the agent or tenant of the foreign corporation who has had possession during the limitation period could at any time have been brought into court and the agent's right to possession determined without regard to the question whether the property was held by a representative or principal.[6]Moreover, there is express authority for the view that a statute limiting the time within which an action for the recovery of land may be brought is applicable to a foreign corporation unless it appears that it could not have been served with process within the jurisdiction of the court.[7]

Footnotes

1 Humphreys v. Idaho Gold Mines Development Co., 21 Idaho 126, 120 P. 823 (1912); Scottish Am. Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666 (1911).

2 Am. Jur. 2d, Foreign Corporations § 234.

3 Robinson v. Imperial Silver Min. Co., 5 Nev. 44, 1869 WL 2384 (1869) (overruled in part on other grounds by, Simmons v. Trivelpiece, 98 Nev. 167, 643 P.2d 1219 (1982)).

4 Union Consolidated Silver Mining Co. v. Taylor, 100 U.S. 37, 25 L. Ed. 541, 1879 WL 16591 (1879) (bound by construction of Nevada statutes).

5 Scottish Am. Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666 (1911).

6 Scottish Am. Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666 (1911).

7 Walker v. L. E. Meyers Const. Co., 1935 OK 965, 175 Okla. 548, 53 P.2d 547 (1935).

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3 Am. Jur. 2d Adverse Possession § 147

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§ 147. Religious corporation or society

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

A.L.R. Library

Adverse possession by religious society, 4 A.L.R.2d 123

There is no distinction between a religious corporation and an individual in regard to the capacity to acquire title by adverse possession.[1]Consequently, a religious corporation can acquire title by adverse possession.[2]

A church may generally acquire title by adverse possession,[3]and religious groups may acquire property by adverse possession by using it in the same way that such property is ordinarily used by a church.[4]

The trustees or deacons of a religious society or church may acquire title to property by adverse possession,[5]and hence, church trustees, like other persons, under a deed as color of title, may acquire good title to land by adverse possession.[6]There is, however, authority for the view that the trustees of an unincorporated religious society which could not itself acquire title by adverse possession cannot acquire such title.[7]Although an unincorporated religious society cannot acquire property, the individuals who compose such society may acquire title by adverse possession which, on the incorporation of the society, inures to its benefit.[8]

Footnotes

1 Shepherd v. Scott's Chapel, A.M.E. Zion Church, 216 Ala. 193, 112 So. 905 (1927).

2 Robertson v. Fincher, 348 So. 2d 466 (Ala. 1977).

3 Burton v. Griffith, 226 Ark. 641, 291 S.W.2d 516 (1956).

4 O. K. C. Corp. v. Allen, 574 S.W.2d 809 (Tex. Civ. App. Texarkana 1978), writ refused n.r.e., (May 30, 1979).

5 Bridges v. Henson, 216 Ga. 423, 116 S.E.2d 570 (1960) (trustees).

6 Deepwater Ry. Co. v. Honaker, 66 W. Va. 136, 66 S.E. 104 (1909).

7 Salem Church of United Brethren in Christ in Baltimore County v. Numsen, 191 Md. 43, 59 A.2d 757, 4 A.L.R.2d 117 (1948).

8 Reformed Church of Gallupville v. Schoolcraft, 65 N.Y. 134, 1875 WL 10945 (1875).

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3 Am. Jur. 2d Adverse Possession § 148

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§ 148. Cemetery authority or association

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

A.L.R. Library

Acquisition of title to ground through adverse possession by cemetery or graveyard authorities, 41 A.L.R.2d 925

It is generally held that cemetery authorities or associations, otherwise entitled to hold legal title to property to be used for burial purposes, may acquire such property by adverse possession[1] even as to land not yet used as burial plots.[2] However, the contention that a cemetery association incorporated by the owners of a group of plots previously used for burial purposes had acquired adverse title, as against the owners of the various plots, to land included within a fence erected by the association has been rejected.[3]

Footnotes

1 Kuhn v. Gabriel Cemetery Ass'n, 202 So. 2d 634 (Miss. 1967); C. L. Gray Lumber Co. v. Pickard, 220 Miss. 419, 71 So. 2d 211, 41 A.L.R.2d 920 (1954).
As to adverse possession of cemeteries and lots therein, see § 255.

2 Berrey v. Jean, 401 N.E.2d 102 (Ind. Ct. App. 1980) (disapproved of on other grounds by, Fraley v. Minger, 829 N.E.2d 476 (Ind. 2005)).

3 Rathbunville Union Cemetery Ass'n v. Betson, 208 N.Y. 364, 101 N.E. 892 (1913).

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3 Am. Jur. 2d Adverse Possession § 149

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§ 149. Members of the public

Topic Summary | Correlation Table | References

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A.L.R. Library

Acquisition of title to land by adverse possession by state or other governmental unit or agency, 18 A.L.R.3d 678

The public may obtain title by adverse possession to that which it has occupied during the full statutory period.[1] However, the acquisition of such title would have to be through a public or governmental entity rather than the unorganized public.[2]

Caution:

However, the occupancy or use by the public of one portion of a road does not avail it in its claim to another portion not occupied by it.[3]

Footnotes

1 Ogle v. Hodge, 217 Ark. 913, 234 S.W.2d 24 (1950); Lincoln Parish School Bd. v. Ruston College, 162 So. 2d 419 (La. Ct. App. 2d Cir. 1964); Basye v. Fayette R-III School Dist. Bd. of Educ., 150 S.W.3d 111 (Mo. Ct. App. W.D. 2004).

2 Morgan v. McLoughlin, 6 Misc. 2d 434, 163 N.Y.S.2d 51 (Sup 1957), judgment aff'd, 6 A.D.2d 704, 174 N.Y.S.2d 890 (2d Dep't 1958), judgment aff'd, 5 N.Y.2d 1041, 185 N.Y.S.2d 801, 158 N.E.2d 498 (1959). As to acquisition by governmental entities, see §§ 150 et seq.

3 Descheemaeker v. Anderson, 131 Mont. 322, 310 P.2d 587, 63 A.L.R.2d 1153 (1957).

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3 Am. Jur. 2d Adverse Possession § 150

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§ 150. Governmental entity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

A.L.R. Library

Acquisition of title to land by adverse possession by state or other governmental unit or agency, 18 A.L.R.3d 678

Title by adverse possession may be acquired by the United States[1] or by a state,[2] county,[3] city,[4] or other governmental entity.[5]

Practice Tip:

It has been stated that the test used to determine whether a local government has acquired property by adverse possession is clearly not the same test as that used to determine whether a party has acquired government property by virtue of the government's abandonment of the same.[6]

A governmental entity must show all facts that must be shown by an individual to establish title by adverse possession.[7]

CUMULATIVE SUPPLEMENT

Cases:

Evidence was sufficient, in county's quiet title action against owners of real property adjacent to county's land, to support determination that county obtained title by prescription to disputed lot, where county provided affidavit of possession executed by prior owner of county's land, in which prior owner stated that, for 39 years, he had continuously occupied the land, including the disputed lot, and a land survey completed ten years before county took possession of its land included the disputed portion as part of county's land. West's Ga.Code Ann. § 23–3–60 et seq. Smith v. Mitchell County, 334 Ga. App. 374, 779 S.E.2d 410 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Stanley v. Schwalby, 147 U.S. 508, 13 S. Ct. 418, 37 L. Ed. 259 (1893).

2 State ex rel. R.T.G., Inc. v. State, 141 Ohio App. 3d 784, 2001-Ohio-4267, 753 N.E.2d 869 (10th Dist. Franklin County 2001), judgment rev'd in part on other grounds, 98 Ohio St. 3d 1, 2002-Ohio-6716, 780 N.E.2d 998 (2002); Coos County v. State, 303 Or. 173, 734 P.2d 1348 (1987).

3 § 151.

4 § 152.

5 City of Gainesville v. Morrison Fertilizer, Inc., 158 S.W.3d 872 (Mo. Ct. App. S.D. 2005); Williams v. North Carolina State Bd. of Ed., 266 N.C. 761, 147 S.E.2d 381 (1966); Wood v. Kipton, 160 Ohio App. 3d 591, 2005-Ohio-1816, 828 N.E.2d 173 (9th Dist. Lorain County 2005).
As to acquisition of title by adverse possession of public property, see §§ 257 to 266.

6 Heise v. Village of Pewaukee, 92 Wis. 2d 333, 285 N.W.2d 859 (1979).

7 Ostrander v. Bell, 199 A.D. 304, 192 N.Y.S. 262 (3d Dep't 1921), aff'd, 234 N.Y. 566, 138 N.E. 449 (1922).

3 Am. Jur. 2d Adverse Possession § 151

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§ 151. Governmental entity—County; possession under tax deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 10

A.L.R. Library

Acquisition of title to land by adverse possession by state or other governmental unit or agency, 18 A.L.R.3d 678

It is the general rule that a county may acquire title to land by adverse possession.[1] However, the possession of land by a county under a tax deed is not adverse to the former owner while the latter's right of redemption exists.[2] Thus, where a former owner's right of redemption was never cut off because of a defective notice of the expiration of the period of redemption, the county's possession under its tax deed was not adverse to the former owner even though it ran for many years beyond the normal period of redemption.[3]

Footnotes

1 Itawamba County v. Sheffield, 195 Miss. 359, 13 So. 2d 649 (1943).

2 Accola v. Miller, 76 N.W.2d 517 (N.D. 1956).

3 McGee v. Stokes' Heirs at Law, 76 N.W.2d 145 (N.D. 1956).

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3 Am. Jur. 2d Adverse Possession § 152

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§ 152. Governmental entity—Town or city

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A.L.R. Library

Acquisition of title to land by adverse possession by state or other governmental unit or agency, 18 A.L.R.3d 678

Public entities, including municipalities, may acquire land by adverse possession.[1] A municipal corporation is not deprived of the benefit of continuous adverse possession of land because of the public character of its corporate franchise, and it may acquire title by adverse possession the same as an individual.[2] There is, however, some authority for the view that a municipality cannot acquire title by prescription or adverse possession, particularly due to its right to acquire land by the exercise of the power of eminent domain.[3] In one state, political subdivisions of the State cannot acquire property through acquisitive prescription as to allow such would be in conflict with a provision of the state constitution.[4]

Footnotes

1 In re.88 Acres of Property, 165 Vt. 17, 676 A.2d 778 (1996).

2 City of Raleigh v. Durfey, 163 N.C. 154, 79 S.E. 434 (1913).

3 Sayre Land Co. v. Borough of Sayre, 384 Pa. 534, 121 A.2d 579 (1956).

4 Roy v. Belt, 868 So. 2d 209 (La. Ct. App. 3d Cir. 2004), writ denied, 877 So. 2d 147 (La. 2004).

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3 Am. Jur. 2d Adverse Possession § 153

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§ 153. Governmental entity—School district

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A.L.R. Library

Acquisition of title to land by adverse possession by state or other governmental unit or agency, 18 A.L.R.3d 678

A school district is a body corporate and can acquire title to land by adverse possession.[1]

A school district is not restricted to the acquisition of an easement by adverse use but may acquire the full title by adverse possession.[2]The test of adverse use by a school district is its manifest intention initially and subsequently to hold the property in nonrecognition of those against whom it is claimed.[3]While the character and quality of the use of land by a school district are naturally not of the same type and character that individuals might normally make of land, where it is the character of dominion and use normally exercised and made of property by a school district, it will suffice to support a claim of title by adverse possession in the school district.[4]

In the absence of a license or an agreement granting the right of occupancy, the placing of a school building and other necessary appendages on the land of another, building a fence around it, and conducting school and social functions thereon are evidence of adverse and hostile possession under which title may be claimed after the lapse of the statutory period.[5]

Footnotes

1 Lincoln Parish School Bd. v. Ruston College, 162 So. 2d 419 (La. Ct. App. 2d Cir. 1964); Harris v. Consolidated School Dist. No. 8 C, Dunklin County, 328 S.W.2d 646 (Mo. 1959).

2 Feeler v. Reorganized School Dist. No. 4 of Lincoln County, 290 S.W.2d 102 (Mo. 1956).

3 La Grange Reorganized School Dist. No. R-VI v. Smith, 312 S.W.2d 135 (Mo. 1958).

4 La Grange Reorganized School Dist. No. R-VI v. Smith, 312 S.W.2d 135 (Mo. 1958).

5 Jeffers v. Edge, 1956 OK 109, 295 P.2d 787 (Okla. 1956).

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3 Am. Jur. 2d Adverse Possession III B Refs.

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III. By and Against Whom Title May Be Acquired

B. Against Whom Title May Be Acquired

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3 Am. Jur. 2d Adverse Possession § 154

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1. In General

§ 154. Generally

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Forms

Forms relating to against whom title may be acquired, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

As a general rule, title by adverse possession may be acquired against all persons who are not excepted from the operation of the statute of limitations even though they did not know, or claim, that they had title to the property involved.[1]However, the possession of real property cannot ordinarily be considered as adverse as to one who, during its continuation, did not have a right of entry[2]as, for instance, a remainderman or reversioner.[3]The presumption of a grant from an adverse possession for the statutory period arises only where the person against whom the right is claimed could have lawfully interrupted or prevented the exercise of the subject of the supposed grant.[4]

Statutory protection from adverse possession may be afforded to lands that have a pious, charitable, or public use.[5]

CUMULATIVE SUPPLEMENT

Cases:

Statute precluding adverse possession of charitable property was not an affirmative defense, and therefore record owner's failure to raise statute in answer did not waive defense in adverse possession action by abutting property owners; statute was related to adverse possessors' prima facie case, as it limited the amount of time possessors' could count toward fulfillment of prescriptive period. 12 V.S.A. § 462. Roy v. Woodstock Community Trust, Inc., 2013 VT 100A, 94 A.3d 530 (Vt. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Waterman Hall v. Waterman, 220 Ill. 569, 77 N.E. 142 (1906).
As to legal control of property held in hostility to absentee owner, see Am. Jur. 2d, Absentees § 13.

2 Pahler v. Schoenhals, 234 S.W.2d 581 (Mo. 1950).

3 § 221.

4 Greenbaum v. Harrison, 132 Md. 34, 103 A. 84 (1918).
As to presumption of grant, see § 7.

5 Empire Dist. Elec. Co. v. Gaar, 26 S.W.3d 370 (Mo. Ct. App. S.D. 2000).
As to adverse possession by religious organizations, see § 147.

3 Am. Jur. 2d Adverse Possession § 155

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§ 155. Governmental entity

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Claims predicated upon lapse of time, such as adverse possession, may not be asserted against the government.[1]

A municipal corporation that holds title to property in its governmental capacity, for public use, is immune from divestiture of title by adverse possession.[2]A city holds property in a governmental capacity, such that the city cannot lose title through adverse possession, even though private entities have leased the property from the city for commercial purposes where the operation of the property serves a public purpose of monitoring the escape of leachate and landfill gas from a nearby landfill.[3]However, an adverse possession claim that is perfected prior to a city's acquisition of the property at issue is not barred by a statute that precludes actions against the government predicated upon a lapse of time where the underlying principles of adverse possession apply to private parties only and only the private parties are involved in the underlying adverse possession claim, and the policy behind the statute is only served where the land is in public ownership at the time the claim arises.[4]

A nonprofit religious organization's status as a "public benefit corporation" does not make it a "public entity" immune from adverse possession.[5]Likewise, a subdivision association is not a "state agency" for purposes of immunity from adverse possession, although it is the administrator of a special community benefit district pursuant to the county code, where the State does not control the association in any meaningful way, and the scope of the association's concerns are entirely limited to the subdivision.[6]

Footnotes

1 Stecklein v. City of Cascade, 693 N.W.2d 335 (Iowa 2005); Houck v. Bd. of Park Commrs. of the Huron Cty. Park Dist., 116 Ohio St. 3d 148, 2007-Ohio-5586, 876 N.E.2d 1210 (2007); Gorman v. City of Woodinville, 160 Wash. App. 759, 249 P.3d 1040 (Div. 1 2011), review granted, 172 Wash. 2d 1001, 258 P.3d 685 (2011) and aff'd, 175 Wash. 2d 68, 283 P.3d 1082 (2012).

2 Stecklein v. City of Cascade, 693 N.W.2d 335 (Iowa 2005); Leeds v. City of Muldraugh, 329 S.W.3d 341 (Ky. Ct. App. 2010); Hillsmere Shores Improvement Ass'n, Inc. v. Singleton, 182 Md. App. 667, 959 A.2d 130 (2008).

3 Gallo v. City of New York, 51 A.D.3d 630, 857 N.Y.S.2d 681 (2d Dep't 2008).

4 Gorman v. City of Woodinville, 160 Wash. App. 759, 249 P.3d 1040 (Div. 1 2011), review granted, 172 Wash. 2d 1001, 258 P.3d 685 (2011) and aff'd, 175 Wash. 2d 68, 283 P.3d 1082 (2012).

5 Hagman v. Meher Mount Corporation, 215 Cal. App. 4th 82, 155 Cal. Rptr. 3d 192 (2d Dist. 2013).

6 Hillsmere Shores Improvement Ass'n, Inc. v. Singleton, 182 Md. App. 667, 959 A.2d 130 (2008).

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3 Am. Jur. 2d Adverse Possession § 156

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§ 156. Trustee or beneficiary

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A third person may acquire title to trust property by adverse possession.[1]Thus, the rule is uniformly recognized that title by adverse possession may be acquired to property held in trust and that if a trustee delays the assertion of rights until the statute effects a bar against the trustee, the beneficiary will also be barred.[2]One of the duties of a trustee is to hold the legal title, and it is the trustee's duty, if there is any interference by anyone with trust lands, to prevent such interference ripening into any rights prejudicial to the beneficiary.[3]If the trustee fails so to protect the trust estate and allows intruders adverse possession for the statutory period, both the trustee and the beneficiary will be barred from asserting any interest in the property.[4]So, where a third party is in possession, denying that any trust affecting the estate has been created, or asserting that the trust has been fully performed, or released or discharged, or otherwise does not exist, and claiming adversely to both the trustee and beneficiary, such possession is adverse; and if all those who would have a right to question it acquiesce during the time of limitation, the statute is a bar.[5]

The adverse possession of a trust estate has the effect of preventing a recovery of the property by persons who would otherwise be entitled to the possession at the termination of the trust.[6]

Where a remainder is held in trust, an adverse possession against the trustee will also be effective as against beneficiaries.[7]

Footnotes

1 Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).

2 Meeks v. Olpherts, 100 U.S. 564, 25 L. Ed. 735, 1879 WL 16553 (1879).

3 Benbow v. Levi, 50 S.C. 120, 27 S.E. 655 (1897).

4 Benbow v. Levi, 50 S.C. 120, 27 S.E. 655 (1897).

5 Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).

6 Waterman Hall v. Waterman, 220 Ill. 569, 77 N.E. 142 (1906); Huntington Real Estate Co. v. Megaree, 280 Mo. 41, 217 S.W. 301 (1919).

7 Meeks v. Olpherts, 100 U.S. 564, 25 L. Ed. 735, 1879 WL 16553 (1879).

As to adverse possession of remainders, generally, see §§ 221 to 225.

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3 Am. Jur. 2d Adverse Possession § 157

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§ 157. Mortgagee

Topic Summary | Correlation Table | References

West's Key Number Digest

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The view has been taken that adverse possession by a stranger, even though sufficient to bar the owner's title, does not bar the mortgagee's right thereto.[1]Other cases reach the same result but with specific reference to situations where the adverse possession was initiated subsequently to the mortgage.[2]

On the other hand, the view also has been taken that adverse possession that would have barred the owner's right would also bar the mortgagee's right to the land, and an adverse possessor of mortgaged land is within the rule that a person who has an interest in the land may set up the fact that a mortgagee's right to foreclose is barred by the statute of limitations.[3]Other cases hold that adverse possession by a stranger, commenced before the execution of the mortgage and continued for the period requisite to bar the owner, bars the mortgagee's interest in the land, apparently on the theory that the mortgagee is bound to take notice of any adverse claim being asserted at the time of the mortgage.[4]Still, other courts hold that adverse possession by a stranger is a bar against the mortgagee only after the expiration of the time within which the mortgagee is allowed to foreclose the mortgage, plus the period intervening between the execution of the mortgage and the initiation of the adverse possession.[5]

Adverse possession may be initiated against a mortgagee immediately on the commencement of the possession, in the absence of actual or constructive knowledge by the adverse claimant of the mortgage.[6]Adverse possession initiated by a stranger will not be suspended as to the mortgagee by a mere extension of the indebtedness or undue delay of foreclosure after the adverse possession commenced.[7]

Footnotes

1 Coe v. Finlayson, 41 Fla. 169, 26 So. 704 (1899).

2 Hart v. Lake Josephine Co., 149 Fla. 754, 1 So. 2d 635 (1941); Broad v. Warnecke, 144 S.W.2d 1005 (Tex. Civ. App. Amarillo 1940), judgment aff'd, 138 Tex. 631, 161 S.W.2d 453 (1942).

3 Stryker v. Rasch, 57 Wyo. 34, 112 P.2d 570, 136 A.L.R. 770 (1941).

4 Drawdy v. Lake Josephine Co., 149 Fla. 756, 1 So. 2d 631 (1941); Stryker v. Rasch, 57 Wyo. 34, 112 P.2d 570, 136 A.L.R. 770 (1941).

5 Stryker v. Rasch, 57 Wyo. 34, 112 P.2d 570, 136 A.L.R. 770 (1941).

6 Stryker v. Rasch, 57 Wyo. 34, 112 P.2d 570, 136 A.L.R. 770 (1941).

7 Stryker v. Rasch, 57 Wyo. 34, 112 P.2d 570, 136 A.L.R. 770 (1941).

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1. In General

§ 158. Judgment creditor

Topic Summary | Correlation Table | References

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Adverse possession may run against a judgment creditor of the titleholder to land.[1] Thus, where a judgment creditor sits by and fails to enforce a judgment while the actual possession of an adverse claimant ripens into title, the latter has the superior right.[2] It is said that the judgment creditor cannot claim lack of notice of the adverse possessor's claims, for the actual possession of such adverse claimant was sufficient to put the judgment creditor on notice.[3]

Caution:

The recordation of the judgment during the adverse occupancy does not halt the running of the statute.[4]

Footnotes

1 Hillsborough Inv. Co. v. Lawyers Trust Co., 148 Fla. 224, 3 So. 2d 870 (1941).
2 Hillsborough Inv. Co. v. Lawyers Trust Co., 148 Fla. 224, 3 So. 2d 870 (1941).
3 Hillsborough Inv. Co. v. Lawyers Trust Co., 148 Fla. 224, 3 So. 2d 870 (1941).
4 Hillsborough Inv. Co. v. Lawyers Trust Co., 148 Fla. 224, 3 So. 2d 870 (1941).

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1. In General

§ 159. Railroads

Topic Summary | Correlation Table | References

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In some states, title to real estate cannot be acquired from a railroad company by adverse possession[1] although sometimes, this rule is limited in application to where the property is being used for railroad purposes.[2] Accordingly, in some states, railroad property acquired by private sale and held in fee simple, which has not been designated for the railroad's line or other railroad operations, is subject to adverse possession.[3] A distinction is sometimes made between railroad property acquired through a public grant, which is not subject to adverse possession,[4] and railroad property acquired by means of a private sale, which is subject to adverse possession.[5]

Footnotes

1 Bangor & Aroostook R. Co. v. Daigle, 607 A.2d 533 (Me. 1992); McLaurin v. Winston-Salem Southbound Ry. Co., 323 N.C. 609, 374 S.E.2d 265 (1988).

2 Boyles v. Missouri Friends of Wabash Trace Nature Trail, Inc., 981 S.W.2d 644 (Mo. Ct. App. W.D. 1998); Gustin v. Scheele, 250 Neb. 269, 549 N.W.2d 135 (1996).

3 Gustin v. Scheele, 250 Neb. 269, 549 N.W.2d 135 (1996).

4 Read v. Montgomery County, 101 Md. App. 62, 643 A.2d 476 (1994).

5 Meiers v. Wang, 192 Wis. 2d 115, 531 N.W.2d 54 (1995).

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2. Persons Under Disability

§ 160. Generally

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Forms

Forms relating to disability, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

Under the principle that the doctrine of adverse possession is based on the presumption of a grant or conveyance,[1] if the person from whom the grant is presumed is under a legal disability to make a grant, there generally can be no title by adverse possession as against such person.[2] Statutes of limitation, as a rule, exempt from their operation all persons who are under disabilities such as those of infancy, mental incompetency, and the like, and in such cases, an additional time is allowed in which the party may act to recover property after the removal of the disability.[3] As a general rule, successive disabilities cannot be taken advantage of to prolong the statute.[4]

Observation:

Regardless of what may seem to be the general rule in these situations, the local laws must be consulted in this respect as the question of disabilities as a bar to title by adverse possession is a purely statutory determination.[5]

Caution:

In some jurisdictions, it is held that when a joint action is given to several persons, the statute will run against all even though some of them are under a statutory disability.[6]

Footnotes

1 § 7.

2 Abel v. Abel, 245 Iowa 907, 65 N.W.2d 68 (1954); Braue v. Fleck, 23 N.J. 1, 127 A.2d 1 (1956) (abrogated on other grounds by, J & M Land Co. v. First Union Nat. Bank, 166 N.J. 493, 766 A.2d 1110 (2001)).

3 Braue v. Fleck, 23 N.J. 1, 127 A.2d 1 (1956) (abrogated on other grounds by, J & M Land Co. v. First Union Nat. Bank, 166 N.J. 493, 766 A.2d 1110 (2001)).
As to acquisition of adverse possession title against an infant, see § 161.
As to acquisition of adverse possession title against an incompetent person, see § 162.

4 De Hatre v. Edmunds, 200 Mo. 246, 98 S.W. 744 (1906) (coverture and mental incompetency).

5 Carney v. Hennessey, 74 Conn. 107, 49 A. 910 (1901).

6 Cameron v. Hicks, 141 N.C. 21, 53 S.E. 728 (1906).
As to adverse possession between cotenants, see §§ 190 to 202.

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2. Persons Under Disability

§ 161. Infants

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The possession of one claiming title to land by adverse possession, who begins possession at a time when the owner is an infant, generally cannot be adverse to the owner during the time the latter is under disability, and the statute generally does not begin to run until after removal of the disability[1] or, in other words, until the infant reaches majority.[2] Where the marriage of an infant automatically removes the disability of infancy, the marriage of an infant owner of land held adversely to such owner starts the running of the statute of limitations.[3]

Observation:

A record owner who asserts the disability of infancy to defeat a claim of title by adverse possession must show that the alleged adverse possession began during minority.[4]

Caution:

Under some statutes, an adverse possession that originates during the record owner's infancy will ripen into title if a possessory action is not brought by the owner within the specified statutory period after attaining majority.[5]

In some cases, the benefits of the disability of infancy may extend to other co-owners of the property.[6]However, the disability of infancy as to one cotenant will not be extended so as to protect other cotenants.[7]

Footnotes

1 Adams v. Adams, 220 S.C. 131, 66 S.E.2d 809 (1951).
As to disability subsequent to the commencement of the running of the statute, see § 163.
As to personal disability or incapacity as affecting limitation of actions, generally, see Am. Jur. 2d, Limitation of Actions §§ 195 to 201.

2 Adams v. Adams, 220 S.C. 131, 66 S.E.2d 809 (1951).
As to adverse possession by an infant, see § 141.
As to adverse possession by parent against child or by child against parent, see § 170.

3 Louisiana & T. Lumber Co. v. Lovell, 147 S.W. 366 (Tex. Civ. App. Galveston 1912).

4 Armstrong v. Wilcox, 57 Fla. 30, 49 So. 41 (1909).

5 Pearson v. Hasty, 1943 OK 179, 192 Okla. 425, 137 P.2d 545, 147 A.L.R. 232 (1943).

6 Gilbert v. Hopkins, 204 F. 204 (C.C.A. 4th Cir. 1913).
As to running of statute against a joint cause of action, generally, even though some parties plaintiff are under disability, see § 160.

7 Sibley v. Sibley, 88 S.C. 184, 70 S.E. 615 (1911).
As to adverse possession against cotenants, see §§ 203 to 212.

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2. Persons Under Disability

§ 162. Mental impairment

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The possession of one claiming title to land by adverse possession, who begins possession while the owner is mentally impaired, is not adverse to the owner during the time the latter is under such disability.[1] Time begins to run only after removal of the disability.[2] The same rule applies where there is partial mental incompetency which prevents the afflicted person from understanding rights in regard to the subject matter of the suit.[3]

Caution:

It is important to consult local laws in this connection, inasmuch as such laws may alter general rules, such as statutory provisions requiring action to be brought by the incompetent within a certain number of years after becoming of sound mind.[4]

Footnotes

1 Memmott v. Bosh, 520 P.2d 1342 (Utah 1974).

2 Abel v. Abel, 245 Iowa 907, 65 N.W.2d 68 (1954).
As to the applicability of local statutes to determine questions regarding disabilities, see § 160.
As to adverse possession by an incompetent person, see § 141.
As to effect of mental impairment on limitation of actions, generally, see Am. Jur. 2d, Limitation of Actions §§ 207 to 212.

3 Blalock v. Bell, 172 Ga. 313, 157 S.E. 696 (1931).

4 § 160.

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2. Persons Under Disability

§ 163. Subsequently arising disability

Topic Summary | Correlation Table | References

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Disability subsequent to the commencement of the running of the statute of limitations, such as the disability of infancy, mental incompetency, or coverture, does not interrupt the running of the statute.[1] In the absence of a statute otherwise providing, it is the general rule that where the statute of limitations has commenced to run against the right of an owner of real property to sue for its recovery, the running of the statute is not interrupted by the death of the owner and the casting of the descent of the land on one under disability or by the fact that the owner had conveyed the land to one under disability.[2] Thus, where the statute of limitations has begun to run in favor of one in adverse possession against an owner who dies leaving heirs who are minors, the disability of infancy does not affect the operation of the statute since the disability is subsequent to the commencement of the running of limitations.[3]

Footnotes

1 Am. Jur. 2d, Limitation of Actions § 199.

2 Hogan v. Kurtz, 94 U.S. 773, 24 L. Ed. 317, 1876 WL 19633 (1876).

3 Commercial Bank & Trust Co. v. Jordan, 85 Mont. 375, 278 P. 832, 65 A.L.R. 968 (1929).

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3 Am. Jur. 2d Adverse Possession III C Refs.

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C. Effect of Particular Relationships Between Parties

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C. Effect of Particular Relationships Between Parties

1. In General

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Acquisition of title to land by adverse possession by state or other governmental unit or agency, 18 A.L.R.3d 678

Under the well-established principle that one cannot hold title adversely to one's self, title cannot be acquired by adverse possession by a person holding land in hostility to him- or herself.[1] One who has record title and concomitantly also possesses property cannot thereby acquire title to the property by adverse possession as the possession of property in an open and continuous manner is a possession and a use of property which is consistent with and incident to ownership by one who has record title to the property.[2] The legal owners of property cannot adversely possess it, even after defaulting on a promissory note that is secured by a deed of trust to the property, as the holder of the note has no automatic right of entry.[3] It is also well settled that where two tracts of land have a common owner, there can be no adverse possession since an owner cannot prescribe against himself.[4] It follows that a person holding land in one capacity cannot hold it adversely to him- or herself claiming in another capacity.[5]

One governmental unit may not claim title against another governmental unit on the ground of adverse possession where one is an agency of the other or where both are agencies of the same government evidently for the reason that neither can have an interest adverse to the interest of the other in such situations.[6]

Footnotes

1 Pluhar v. Guderjahn, 134 Mont. 46, 328 P.2d 129 (1958).
A party cannot establish adverse use of his or her own property. Allen v. Nickerson, 155 P.3d 595 (Colo. App. 2006).

2 DeVita v. Esposito, 13 Conn. App. 101, 535 A.2d 364 (1987).

3 Beal Bank, S.S.B. v. Thornton, 70 Ark. App. 336, 19 S.W.3d 48 (2000).

4 Porterfield v. Spurgeon, 379 So. 2d 56 (La. Ct. App. 3d Cir. 1979), writ denied, 381 So. 2d 1235 (La. 1980).

5 Pluhar v. Guderjahn, 134 Mont. 46, 328 P.2d 129 (1958).

6 Trustees of University of South Carolina v. City of Columbia, 108 S.C. 244, 93 S.E. 934 (1917); Board of Ed. of Memphis City Schools v. Shelby County, 155 Tenn. 212, 292 S.W. 462 (1927).

3 Am. Jur. 2d Adverse Possession § 165

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C. Effect of Particular Relationships Between Parties

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§ 165. Principal and agent

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Under the rule that the possession of an agent is the possession of the principal,[1] the possession of land by an agent cannot be deemed adverse to the principal.[2] On the contrary, possession by an agent will be considered to be the possession of the principal in the absence of proof to the contrary.[3] This is true even as to the possession of one who acts as agent without authority or one who exceeds authority as an agent.[4]

Under certain circumstances, however, the holding of land by an agent may be adverse to the principal, and where an agent disavows the idea of holding property as an agent and asserts an exclusive right in the property, either with the principal's actual knowledge or so openly and notoriously that the principal must know of it, the possession then becomes adverse.[5] An agent may hold adversely to a former principal after the agency is terminated.[6]

Footnotes

1 § 20.

2 McCreary v. Coggeshall, 74 S.C. 42, 53 S.E. 978 (1906).
As to duty of agent not to act adversely to principal, see Am. Jur. 2d, Agency §§ 223 to 238.

3 McCreary v. Coggeshall, 74 S.C. 42, 53 S.E. 978 (1906).

4 Ashford v. Ashford, 136 Ala. 631, 34 So. 10 (1903).

5 Davis v. Williams, 130 Ala. 530, 30 So. 488 (1901).

6 Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).

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3 Am. Jur. 2d Adverse Possession § 166

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III. By and Against Whom Title May Be Acquired

C. Effect of Particular Relationships Between Parties

1. In General

§ 166. Partners

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

It is a general principle that a partner cannot derive any benefit from the partnership relationship for such partner as against copartners or from any act that constitutes a breach of duty to the firm.[1] This principle prevents a partner from secretly acquiring an outstanding title to partnership property and setting it up against a copartner.[2] Moreover, where real estate is purchased and paid for with partnership funds and conveyed to one partner, no length of possession by such partner bars the other partners.[3]

Footnotes

1 Am. Jur. 2d, Partnership §§ 295, 298

2 Am. Jur. 2d, Partnership § 298.

3 Riddle v. Whitehill, 135 U.S. 621, 10 S. Ct. 924, 34 L. Ed. 282 (1890).

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3 Am. Jur. 2d Adverse Possession § 167

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1. In General

§ 167. Bailor and bailee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

Forms

Forms relating to bailee, generally, see Am. Jur. Legal Forms 2d, Adverse Possession[Westlaw® Search Query]

The mere retention by a bailee of the subject matter, however exclusive or however long continued, will not in itself be sufficient to work a change of property or ownership therein.[1]However, there is support for the view that in certain cases, the assertion by a bailee of an adverse title against the bailor, and a continued possession of the property that is open, notorious, and hostile to the bailor's title, and of which the bailor is charged with notice, may ripen into title by adverse possession in the bailee[2]although there is authority stating that a bailee must return the property or its proceeds to the bailor before the bailee can assert a claim thereto adverse to the bailor.[3]The general rule appears to be that a bailment is not so far terminated as to start the running of the statute of limitations in favor of the bailee, so as to base a claim of title by adverse possession, until the bailee sets up and asserts some claim adverse to the bailor which amounts to a disclaimer of the bailor's title and on which the bailee's possession may be based.[4]

Footnotes

1 Edgar v. Parsell, 184 Mich. 522, 151 N.W. 714 (1915).

2 Edgar v. Parsell, 184 Mich. 522, 151 N.W. 714 (1915).

3 Blackorby v. Friend, Crosby & Co., 134 Minn. 1, 158 N.W. 708 (1916).

4 Slack v. Bryan, 299 Ky. 132, 184 S.W.2d 873 (1945); Priester v. Milleman, 161 Pa. Super. 507, 55 A.2d 540 (1947).

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3 Am. Jur. 2d Adverse Possession § 168

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1. In General

§ 168. Guardian and ward

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

Under the rule that a guardian's possession is deemed to be the possession of the ward,[1] a guardian's possession cannot ordinarily lay the foundation of a claim of adverse possession of a guardian as against the ward.[2] Thus, the general rule is that as long as the relationship of guardian and ward exists, the guardian may not assert an interest or title antagonistic to the ward and therefore cannot hold property adversely to the ward.[3]

However, a guardian may repudiate the trust and thereafter hold adversely to the ward.[4] Further, if the guardian buys land at a guardian's sale, rendering the sale voidable, the guardian may gain title by adverse possession, the statute beginning to run when the ward is of age.[5]

Footnotes

1 § 141.

2 State v. Bank of Bristol, 165 Tenn. 461, 55 S.W.2d 771 (1933).
As to trust relation between guardian and ward, see Am. Jur. 2d, Guardian and Ward §§ 205 to 214.

3 Garcia v. Sanchez, 64 N.M. 114, 325 P.2d 289 (1958).
As to possession of guardian being adverse to ward, see Am. Jur. 2d, Guardian and Ward § 211.

4 Garcia v. Sanchez, 64 N.M. 114, 325 P.2d 289 (1958).

5 Hindman v. O'Connor, 54 Ark. 627, 16 S.W. 1052 (1891).

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3 Am. Jur. 2d Adverse Possession § 169

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C. Effect of Particular Relationships Between Parties

2. Members of Family

§ 169. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Grantor's possession as adverse possession against grantee, 39 A.L.R.2d 353 (Effect of family relationship between grantor and grantee)

It is a general principle that members of a family may not acquire adverse possession against each other in the absence of a showing of a clear, positive, and continued disclaimer and disavowal of title, and an assertion of an adverse right brought home to the true owner a sufficient length of time to bar the owner under the statute of limitations from asserting ownership rights.[1] The existence of a family relationship between the parties will prevent[2] or rebut[3] a presumption of adverse holding.

Practice Tip:

Stronger evidence of adverse possession is required where there is a family relation between the parties than where no such relation exists,[4] and such claims should not be sustained except on a clear preponderance of the evidence.[5]

CUMULATIVE SUPPLEMENT

Cases:

When there is a family relation between co-tenants, stronger evidence of adverse possession by one co-tenant is required. Washington v. Washington, 2013 Ark. App. 54, 425 S.W.3d 858 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Petsch v. Widger, 214 Neb. 390, 335 N.W.2d 254 (1983).

2 Lynch v. Lynch, 236 S.C. 612, 115 S.E.2d 301 (1960).

3 Metze v. Meetze, 231 S.C. 154, 97 S.E.2d 514 (1957).

4 McGuire v. Wallis, 231 Ark. 506, 330 S.W.2d 714 (1960); Sherman v. Wallace, 88 Ark. App. 229, 197 S.W.3d 10 (2004).

5 Lynch v. Lynch, 236 S.C. 612, 115 S.E.2d 301 (1960).

3 Am. Jur. 2d Adverse Possession § 170

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2. Members of Family

§ 170. Parent and child

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Parent and Child 8

As a general rule, an adverse possession cannot be predicated on the possession of the parent as against a child.[1] The possession by a parent of a child's land will not be deemed adverse to the child, and such possession will ordinarily be presumed to be permissive and not adverse.[2]

Also, as a general rule, an adverse possession cannot be predicated on the possession of a child as against its parent.[3] Where one occupies land by permission of the parents and not under a claim of title, the possession is not adverse.[4] In such case, the fact that the parents promised to give the land to the occupying child generally will not alter the result, at least as far as adverse possession of the land by the child is concerned.[5]

In order that a possession by a parent against a child, or vice versa, may become adverse, the owner must have had some clear, definite, and unequivocal notice of the adverse claimant's intention to assert an exclusive ownership in the claimant.[6] A child who works on land for a parent may afterward in good faith hold the land adversely to the parent where the child buys the land from the county at a tax sale after notice to the parent and without knowledge at that time of any infirmity in the county's title.[7]

Caution:

Where there is a relationship of parent and child between adverse claimants and adjoining owners, the claimants are required to sustain their proof of adverse possession by stronger evidence than is required in ordinary cases involving the question.[8]

Footnotes

1 Hehnke v. Starr, 158 Neb. 575, 64 N.W.2d 68 (1954).

2 Mullan v. Bank of Pasco County, 101 Fla. 1097, 133 So. 323 (1931).

3 Cockrell v. Kelley, 428 So. 2d 622 (Ala. 1983).

4 Triplett v. Chadwick, 311 S.W.2d 554 (Ky. 1958).

5 Humphrey v. Harrison, 646 S.W.2d 340 (Ky. 1982).

6 Bellamy v. Shryock, 211 Ark. 116, 199 S.W.2d 580 (1947); Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

7 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

8 Bellamy v. Shryock, 211 Ark. 116, 199 S.W.2d 580 (1947).

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3 Am. Jur. 2d Adverse Possession § 171

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2. Members of Family

§ 171. Husband and wife

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Husband and Wife 16

A.L.R. Library

Adverse possession under parol gift of land, 43 A.L.R.2d 6

The rule is well settled, at least in the absence of possession under color of title,[1] that neither spouse can acquire title by adverse possession, as against the other, of lands of which they have the joint use or are in joint occupancy, during the continuance of the marriage relationship.[2] Neither spouse in possession of property as tenants by the entirety can acquire title against the other by adverse possession.[3] The fact that one spouse holding land in common with the other spouse manages, improves, and rents it, and collects the rent, does not make the possession hostile and adverse to the interest of the other spouse.[4]

A person who is living with his or her spouse on the spouse's land cannot, at least not without color of title, and in some jurisdictions even with color of title, acquire title to the lands by adverse possession during the continuance of the marriage relationship.[5] Even the exclusive possession by one spouse of the other spouse's land is not necessarily adverse.[6] The fact that a husband is in possession of his wife's land and makes improvements out of the proceeds of the profits from the land gives him no interest in the title.[7]

However, a statement by one spouse to the other spouse that the other spouse has no interest in the property, in which the other spouse claims a resulting trust on the ground of having made a contribution to the purchase price, constitutes a repudiation of any trust that may exist, making inapplicable the rule that a trustee may not claim title by adverse possession.[8]

Footnotes

1 § 172.

2 Kelley v. Kelley, 51 R.I. 173, 153 A. 314, 74 A.L.R. 135 (1931); Stealey v. Lyons, 128 W. Va. 686, 37 S.E.2d 569 (1946).
As to adverse possession by spouses jointly, see § 142.

3 Alles v. Lyon, 216 Pa. 604, 66 A. 81 (1907).

4 Allen v. Allen, 292 Ill. 453, 127 N.E. 85, 27 A.L.R. 1 (1920).

5 Union Oil Co. v. Stewart, 158 Cal. 149, 110 P. 313 (1910) (recognizing rule); McCallister v. McCallister, 342 Ill. 231, 173 N.E. 745, 74 A.L.R. 213 (1930).

6 Horn v. Metzger, 234 Ill. 240, 84 N.E. 893 (1908).

7 McCallister v. McCallister, 342 Ill. 231, 173 N.E. 745, 74 A.L.R. 213 (1930).

8 Cassas v. Cassas, 73 Wyo. 147, 276 P.2d 456, 69 A.L.R.2d 187 (1954).
As to adverse possession by a trustee, generally, see §§ 164, 165.

3 Am. Jur. 2d Adverse Possession § 172

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2. Members of Family

§ 172. Husband and wife—Under color of title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Husband and Wife 16

There is a conflict of authority as to the effect on adverse possession between husband and wife of possession by one spouse under color of title, some cases holding that one spouse cannot acquire title by adverse possession to lands of the other even with possession under color of title[1] whereas other cases hold that title may be acquired where the possession is under color of title.[2] A judgment purporting to vest title to the land of one spouse in the other spouse is held to be color of title on which adverse possession can be based.[3]

Observation:

The presumption that possession by a spouse living with the other spouse is through and on account of the family relation, and not under a claim of adverse ownership, does not arise where some reason exists for the assertion of a title by the adverse claimant, and in such case, there is no greater reason for denying the right to acquire title by adverse possession than for denying the right to maintain a suit against the spouse to recover a debt or to foreclose a mortgage on premises occupied by them.[4]

Footnotes

1 Carpenter v. Booker, 131 Ga. 546, 62 S.E. 983 (1908).

2 Adams v. Adams, 80 N.H. 80, 113 A. 279 (1921).

3 Apodaca v. Hernandez, 61 N.M. 449, 302 P.2d 177 (1956).

4 McPherson v. McPherson, 75 Neb. 830, 106 N.W. 991 (1906).

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3 Am. Jur. 2d Adverse Possession § 173

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2. Members of Family

§ 173. Husband and wife—Where spouses live apart; effect of divorce

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Husband and Wife 16

After divorce, former spouses ordinarily may hold adversely to each other[1] provided the necessary requisites of an adverse possession are established. This may be true even though the divorce is invalid.[2] However, the possession of land by one spouse as trustee for the use and benefit of the other spouse is not adverse even after the spouse has obtained a divorce, and in such case, the spouse can hold adversely only by renouncing title as trustee, surrendering the possession, and retaking it.[3]

The cases are not in accord as to adverse possession after abandonment, and some hold that a spouse who has been abandoned by the other spouse may acquire title to his or her land by adverse possession[4] provided the possession is, in fact, adverse.[5] Other cases deny the right so to acquire such property.[6]

Footnotes

1 Bride v. Walker, 206 Ark. 498, 176 S.W.2d 148 (1943).
2 Bride v. Walker, 206 Ark. 498, 176 S.W.2d 148 (1943).
3 Meacham v. Bunting, 156 Ill. 586, 41 N.E. 175 (1895).
4 Union Oil Co. v. Stewart, 158 Cal. 149, 110 P. 313 (1910).
5 Hayworth v. Williams, 102 Tex. 308, 116 S.W. 43 (1909).
6 Kelley v. Kelley, 51 R.I. 173, 153 A. 314, 74 A.L.R. 135 (1931).

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3 Am. Jur. 2d Adverse Possession § 174

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3. Parties to Judgments and Judicial Sales

§ 174. Generally; parties to suit and purchaser pendente lite

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Judicial Sales 32, 61

The possession of a purchaser pendente lite of property involved in a suit may become adverse to the parties to the suit after termination of the litigation if the elements of adverse possession are otherwise present.[1] However, during the litigation, the possession of a purchaser pendente lite is not adverse to the parties to the suit.[2] Thus, a pendente lite purchaser from a judgment debtor in an action to enforce a judgment lien against real estate of the debtor does not during the pendency of the suit hold such real estate adversely to the party seeking to enforce the lien.[3]

Observation:

If the rule were otherwise, alienations made by parties during the pendency of the suit might defeat its whole purpose, and there would be no end to the litigation.[4]

Footnotes

1 Brown v. Crozer Coal & Land Co., 144 W. Va. 296, 107 S.E.2d 777 (1959).

2 Playa De Flor Land & Imp. Co. v. U.S., 70 F. Supp. 281 (D. C.Z. 1945), judgment modified on other grounds, 160 F.2d 131 (C.C.A. 5th Cir. 1947).

3 Parker's Adm'r v. Clarkson, 39 W. Va. 184, 19 S.E. 431 (1894).

4 Playa De Flor Land & Imp. Co. v. U.S., 70 F. Supp. 281 (D. C.Z. 1945), judgment modified on other grounds, 160 F.2d 131 (C.C.A. 5th Cir. 1947).

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3 Am. Jur. 2d Adverse Possession § 175

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3. Parties to Judgments and Judicial Sales

§ 175. Owner and tax sale purchaser

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Judicial Sales 32, 61

A.L.R. Library

Tax sales or forfeitures by or to governmental units as interrupting adverse possession, 50 A.L.R.2d 600

Owners remaining in possession for the statutory period after a tax foreclosure sale can obtain title by adverse possession.[1]

The possession of a purchaser at a tax sale during the period of redemption is presumptively subordinate to the owner's title if the statute gives the purchaser the right of possession during such period, but the possession is hostile if the purchaser lacks the legal right to possess the property prior to the expiration of the redemption period.[2]Therefore, a purchaser at a tax sale who wrongfully enters on the land under a tax sale certificate, and who holds the land under a claim of right, openly, peaceably, hostilely, and continuously for the statutory period, acquires title as an adverse possessor.[3]

After a county acquires property at a tax sale, a taxpayer's continued possession, allegedly adverse to the title of the county, does not vest fee simple title in the taxpayer.[4]

Footnotes

1 Harvey v. Peters, 227 S.W.2d 867 (Tex. Civ. App. Fort Worth 1950).
As to defeat of valid tax title by adverse possession, see Am. Jur. 2d, State and Local Taxation § 853.
As to right of person in adverse possession of property to attack title of tax sale purchaser, see Am. Jur. 2d, State and Local Taxation § 933.

2 Gunther & Shirley Co. v. Presbytery of Los Angeles, 85 Ariz. 56, 331 P.2d 257 (1958); Feinstein v. McGuire, 297 S.W.2d 513 (Mo. 1957).

3 Gunther & Shirley Co. v. Presbytery of Los Angeles, 85 Ariz. 56, 331 P.2d 257 (1958).

4 Moultrie v. Wright, 266 Ga. 30, 464 S.E.2d 194 (1995); Fred E. Young, Inc. v. Brush Mountain Sportsmen's Ass'n, 697 A.2d 984 (Pa. Super. Ct. 1997).

3 Am. Jur. 2d Adverse Possession § 176

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3. Parties to Judgments and Judicial Sales

§ 176. Parties to judicial sales

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Judicial Sales 32, 61

As a general rule, an owner who stays in possession of property after a judicial sale thereof does not hold adversely to the purchaser.[1]The continued possession of the owner of land between the date of its sale by commissioners and the making of the final decree confirming the conveyance is not adverse to the grantee in such conveyance as until the sale is confirmed, such owner holds, under the control of the court, by virtue of his or her own title.[2]Where land is sold at a judicial sale and the buyer allows the former owner to remain in possession after confirmation, the presumption is that the possession of the original owner is as a quasi tenant or tenant at sufferance of the buyer, and the legal principles governing the acquisition of an adverse title by a tenant as against the landlord[3]are applicable.[4]

The possession of the former owner of land sold by judicial sale will not become adverse as against the title of the purchaser at the sale unless by clear, positive, and affirmative action brought home to the new owner, the one in possession puts the purchaser on notice that the possessor is unequivocably disclaiming the existing tenancy and intends thereafter to claim possession antagonistic to the new owner.[5]Thus, the possession of a judgment debtor may be adverse to that of the purchaser under the judgment, and this is so where it is shown that the judgment debtor has claimed title, openly and notoriously, for the statutory period.[6]

Footnotes

1 Sarasota-Fruitville Drainage Dist. v. All Lands Within Said Dist. Upon Which Drainage Taxes for Year 1928 Have Not Been Paid, 157 Fla. 207, 25 So. 2d 498 (1946); Brewster v. Herron, 1952 OK 440, 267 P.2d 143, 38 A.L.R.2d 335 (Okla. 1952).

2 Rosenstihl v. Cherry, 114 Ohio St. 401, 4 Ohio L. Abs. 226, 151 N.E. 642 (1926).

3 §§ 186 to 189.

4 Sarasota-Fruitville Drainage Dist. v. All Lands Within Said Dist. Upon Which Drainage Taxes for Year 1928 Have Not Been Paid, 157 Fla. 207, 25 So. 2d 498 (1946); Brewster v. Herron, 1952 OK 440, 267 P.2d 143, 38 A.L.R.2d 335 (Okla. 1952).

5 Sarasota-Fruitville Drainage Dist. v. All Lands Within Said Dist. Upon Which Drainage Taxes for Year 1928 Have Not Been Paid, 157 Fla. 207, 25 So. 2d 498 (1946); Brewster v. Herron, 1952 OK 440, 267 P.2d 143, 38 A.L.R.2d 335 (Okla. 1952).

6 Bosley v. Stewart, 140 Iowa 101, 117 N.W. 1103 (1908).

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3 Am. Jur. 2d Adverse Possession § 177

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3. Parties to Judgments and Judicial Sales

§ 177. When statute begins to run against purchaser at judicial sale

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Judicial Sales 32, 61

There is a conflict of authority on the question when the statute of limitations or period of adverse possession commences to run against a purchaser at a judicial sale. Some cases state that where the purchaser has paid the purchase price, and is entitled to a deed, the purchaser has the power to protect his or her interest by appropriate proceedings, and the statute commences to run at that time although a deed has not been received.[1] In some jurisdictions, the statute of limitations begins to run against a purchaser at a judicial sale from the date of delivery of the deed and not from the confirmation of the sale.[2] It has also been held that the statute begins to run against a purchaser after the expiration of the period within which the defendant in execution might have redeemed the land if there had been a genuine sale of it[3] and that the period of prescription should be reckoned from the date of the sheriff's sale and not from the date of the service of notice of seizure under which the sale was made.[4]

Footnotes

1 Marion Inv. Co. v. Virginia Lincoln Furniture Corp., 171 Va. 170, 198 S.E. 508, 118 A.L.R. 939 (1938).

2 Comstock v. Finn, 13 Cal. App. 2d 151, 56 P.2d 957 (4th Dist. 1936).

3 McGee v. Stokes' Heirs at Law, 76 N.W.2d 145 (N.D. 1956).

4 Maisonneuve v. Martin, 155 La. 938, 99 So. 704 (1924).

3 Am. Jur. 2d Adverse Possession § 178

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4. Parties to Sales, Grants, and Gifts

a. Seller and Purchaser

§ 178. Under executory contract or bond for title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Forged deed or bond for title as constituting color of title, 68 A.L.R.2d 452

The purchaser under an executory contract of sale enters into possession under, and without hostility to, the seller.[1] Accordingly, it is the general rule (which, however, frequently yields when additional circumstances appear) that the possession taken by a purchaser under an executory written contract for the purchase of land is not adverse to the seller[2] although it is as against everyone else[3] and is as against the seller to the extent of permitting the purchaser to dispute the seller's title.[4]

A purchaser's possession under an executory contract may become adverse to the seller, however,[5] but not until the purchaser has repudiated the seller's title openly and notoriously and asserted an exclusive right in the property.[6] In such case, it is necessary that notice, either actual or constructive, of the repudiation be given to the seller.[7] Generally, the possession of the purchaser may be rendered adverse by such repudiation and notice, without the necessity of surrendering the possession acquired under the executory contract.[8]

Although possession of the purchaser under an executory contract of purchase is not rendered adverse to the seller by mere default, where there is some act on the part of either the purchaser or the seller that characterizes the possession as hostile, it then is deemed to become adverse.[9] A purchaser may disavow the title of the seller after breach of the contract, but in such cases, there must be a positive and continued disclaimer of title, and an assertion of adverse right must be brought home to the seller, before the statute of limitations will begin to operate.[10]

With respect to the nature of the possession taken by the purchasers under executory contracts, no distinction is made between executory contracts for the sale of land and bonds for title, and it is generally the rule that the possession taken by a purchaser under a bond for title to land is not adverse as to the seller.[11]

Footnotes

1 Leo Egan Land Co., Inc. v. Heelan, 210 Neb. 263, 313 N.W.2d 682 (1981).

2 Leo Egan Land Co., Inc. v. Heelan, 210 Neb. 263, 313 N.W.2d 682 (1981); Smith v. Pittston Co., 203 Va. 408, 124 S.E.2d 1 (1962).

3 Welner v. Stearns, 40 Utah 185, 120 P. 490 (1911).

4 Blight's Lessee v. Rochester, 20 U.S. 535, 5 L. Ed. 516, 1822 WL 2203 (1822).

5 Ripley v. Miller, 165 Mich. 47, 130 N.W. 345 (1911).

6 Chavez v. De Bergere, 231 U.S. 482, 34 S. Ct. 144, 58 L. Ed. 325 (1913); McGuire v. Owens, 300 S.W.2d 556 (Ky. 1957).
As to when permissive possession changes to hostile possession, generally, see § 47.

7 Beagle v. Hanks, 125 Cal. App. 2d 298, 270 P.2d 113 (3d Dist. 1954).

8 Zeller's Lessee v. Eckert, 45 U.S. 289, 4 How. 289, 11 L. Ed. 979, 1846 WL 5696 (1846).

9 Bennett v. Morrison, 120 Pa. 390, 14 A. 264 (1888).

10 Zeller's Lessee v. Eckert, 45 U.S. 289, 4 How. 289, 11 L. Ed. 979, 1846 WL 5696 (1846).

11 Hardin v. Boyd, 113 U.S. 756, 5 S. Ct. 771, 28 L. Ed. 1141 (1885).

3 Am. Jur. 2d Adverse Possession § 179

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Adverse Possession
Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

III. By and Against Whom Title May Be Acquired

C. Effect of Particular Relationships Between Parties

4. Parties to Sales, Grants, and Gifts

a. Seller and Purchaser

§ 179. Under executed contract or bond for title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

It is the general rule that a purchaser who has complied with the terms of the contract by paying the purchase money, and who is entitled to the legal title, has a perfect equity, and possession by such purchaser, in pursuance of such sale and purchase, is presumed to be antagonistic and, if continued for the statutory period, will bar the seller's right of entry or action.[1] Thus, performance by the purchaser of the obligations imposed on the purchaser by the executory contract of purchase, entitling the purchaser to demand a deed, is generally held to convert the possession of the purchaser into an adverse one[2] whether the contract is oral or written.[3] Moreover, since tender of performance is sufficient to entitle the purchaser to a deed, generally after such tender on the part of the purchaser, possession by the purchaser is adverse.[4]

Observation:

Since even a defective title or a conveyance by one who has no title is effective as color of title on which an adverse claim may be based,[5] a purchaser's possession is not prevented from being adverse by such purchaser's knowledge of a defect in the title or subsequent demand for a deed.[6]

Footnotes

1 Croxall v. Shererd, 72 U.S. 268, 18 L. Ed. 572, 1866 WL 9426 (1866).

2 Central Pac. Ry. Co. v. Tarpey, 51 Utah 107, 168 P. 554, 1 A.L.R. 1319 (1917).

3 Bessler v. Powder River Gold Dredging Co., 95 Or. 271, 185 P. 753 (1919).

4 Gamble v. Hamilton, 31 Fla. 401, 12 So. 229 (1893); Brown v. Huey, 103 Ga. 448, 30 S.E. 429 (1898).
As to executory contracts or bonds for title, see § 178.

5 §§ 111 et seq.

6 Newsome v. Snow, 91 Ala. 641, 8 So. 377 (1890); Bessler v. Powder River Gold Dredging Co., 95 Or. 271, 185 P. 753 (1919).

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3 Am. Jur. 2d Adverse Possession § 180

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a. Seller and Purchaser

§ 180. Effect of invalid, unauthorized, or forged contract or bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

As a general rule, an executory parol contract of purchase will not have the effect of rendering adverse, as to the seller, the possession taken under the parol contract by a purchaser who enters into possession in pursuance thereof.[1] Since the possession of the purchaser is taken in pursuance of the contract, therefore amicably to the seller, it is looked on as so continuing regardless of the fact that the purchaser cannot enforce rights as purchaser under the contract.[2] Thus, when a party goes into possession under a verbal contract for the purchase of land, such possession is not adverse to the seller, according to the prevailing view, but is held under the seller[3] until the purchase money is paid.[4]

It is the rule in some jurisdictions, however, that the possession of a purchaser by parol is adverse from the date possession is taken.[5] Further, as in other cases, the possession of the purchaser may become adverse, even though the contract is in parol, by repudiation of the contract by the purchaser and the assertion of a claim of right in such purchaser[6] or by the payment of the purchase price where the contractual obligation consists of a monetary consideration.[7]

Footnotes

1 Creech v. Creech, 186 Ky. 149, 216 S.W. 127 (1919).

2 Creech v. Creech, 186 Ky. 149, 216 S.W. 127 (1919).

3 Lanham v. Bowlby, 86 Neb. 148, 125 N.W. 149 (1910); Thompson v. Camper, 106 Va. 315, 55 S.E. 674 (1906).

4 Moring v. Ables, 62 Miss. 263, 1884 WL 6504 (1884).

5 Moffitt v. Meeks, 29 Tenn. App. 609, 199 S.W.2d 463 (1946).

6 Creech v. Abner, 106 Ky. 239, 20 Ky. L. Rptr. 1812, 50 S.W. 58 (1899).

7 Moring v. Ables, 62 Miss. 263, 1884 WL 6504 (1884).

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3 Am. Jur. 2d Adverse Possession § 181

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b. Grantor and Grantee

§ 181. Possession by grantee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A grantee's possession becomes adverse, not only as to the grantor but also as to all the world, from the time a conveyance has actually been made.[1] However, there can be no adverse possession by the grantee of a deed made as a security for a debt.[2]

Observation:

The possession of a grantee is presumptively adverse to the grantor, and the practical utility of this rule is that a grantee may acquire title by adverse possession as against the grantor even though the conveyance under which the grantee holds is defective.[3]

The possession of the grantee is not shown to be adverse where the grantee recognized the paramount nature of the grantor's claim to property by paying rent for its use after the conveyance.[4]

Footnotes

1 Villa v. Rodriguez, 79 U.S. 323, 20 L. Ed. 406, 1870 WL 12818 (1870).

2 Babcock v. Wyman, 60 U.S. 289, 19 How. 289, 15 L. Ed. 644, 1856 WL 8705 (1856).
As to mortgages, generally, see Am. Jur. 2d, Mortgages §§ 1 et seq.

3 Hubbard v. Curtiss, 684 P.2d 842 (Alaska 1984); Polanski v. Town of Eagle Point, 30 Wis. 2d 507, 141 N.W.2d 281 (1966).
As to a tax deed grantee, see § 175.

4 Findlay v. Hardwick, 230 Ala. 197, 160 So. 336 (1935).

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3 Am. Jur. 2d Adverse Possession § 182

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b. Grantor and Grantee

§ 182. Possession by grantor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Grantor's possession as adverse possession against grantee, 39 A.L.R.2d 353

Ordinarily, where a grantor continues in possession of the land after the execution and delivery of the deed, the possession will be that either of tenant or trustee of the grantee, and the grantor will be regarded as holding the premises subservient to the grantee.[1]Thus, the occupation of land by a grantor, after conveyance, is presumed to be under, and in subordination to, the legal title held by the grantee, for the grantor ordinarily is estopped by the deed from claiming that the holding is adverse.[2]Further, although the title to land is conveyed to another, the grantor is entitled to remain in possession, under a reservation of the life estate or similar interest; such possession will ordinarily be regarded as being under and consonant with the grantor's rights and the grantee's title rather than under an independent claim of title hostile to the grantee.[3]However, where a grantor gives up possession of the major part of the property conveyed but remains in possession of a portion under the mistaken belief that it was not conveyed, the general rule that a grantor's holding possession after conveyance is presumptively permissive does not apply.[4]

Observation:

Where, in addition to the grantor-grantee relationship between the parties, it is shown that they were also in a position of family relationship, some courts have appeared to be especially reluctant to find that an adverse title arose from the continued occupation and use of the property by the grantor after conveyance.[5]

A grantor who enters onto conveyed land for the first time after the execution of a deed is treated as any other trespasser, and the grantor's period of adverse possession commences when the grantor takes "actual and visible" possession of the property "under a claim of right inconsistent with and hostile to the claim of" the grantee.[6]

The presumption that a grantor's possession of property after its conveyance is subservient to the grantee obtains only between them and not between the grantor and the grantee's grantees or successors.[7]The reason for this is that a grantor remaining in possession is presumptively a tenant at the sufferance of the grantee named in the conveyance and not by the sufferance of some other grantee.[8]Therefore, the presumption does not apply after the grantee has conveyed the property to a third person.[9]Nor does the presumption apply as between the grantor or heirs of the grantor and the heirs or devisees of the grantee.[10]A claimant who conveys real property to a grantee by a valid deed cannot subsequently claim title to the property by adverse possession in an action against the grantee's successor where the warranty covenants of quiet enjoyment and future defense of title preclude the claimant from setting up any claim of adverse possession against the grantee's successors.[11]

Footnotes

1 Miller v. Hewell, 271 Ala. 286, 123 So. 2d 126 (1960); Lewicki v. Marszalkowski, 455 A.2d 307 (R.I. 1983); Carter v. Jones, 145 W. Va. 98, 112 S.E.2d 705 (1960).

2 Salter v. Cobb, 264 Ala. 609, 88 So. 2d 845 (1956); Stockwell v. Gibbons, 58 Wash. 2d 391, 363 P.2d 111 (1961).

3 Mahunda v. Thomas, 55 Tenn. App. 470, 402 S.W.2d 485 (1965).

4 Stockwell v. Gibbons, 58 Wash. 2d 391, 363 P.2d 111 (1961).

5 Frost Lumber Industries v. Harrison, 215 La. 767, 41 So. 2d 674 (1949).
As to effect of family relationship, generally, see §§ 169 to 173.

6 McLaren v. Beard, 811 S.W.2d 564 (Tex. 1991).

7 Walker v. Coley, 264 Ala. 492, 88 So. 2d 868 (1956).

8 Walker v. Coley, 264 Ala. 492, 88 So. 2d 868 (1956).

9 Walker v. Coley, 264 Ala. 492, 88 So. 2d 868 (1956).

10 Hutchinson v. Little Four Oil & Gas Co., 275 Pa. 380, 119 A. 534 (1923).

11 Carrozza v. Carrozza, 944 A.2d 161 (R.I. 2008).

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3 Am. Jur. 2d Adverse Possession § 183

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b. Grantor and Grantee

§ 183. Possession by grantor—When possession becomes hostile

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Grantor's possession as adverse possession against grantee, 39 A.L.R.2d 353

A conveyance does not, of itself, prevent the grantor from acquiring title by adverse possession as against the immediate and remote grantees,[1] and the presumption that the possession of a grantor is subservient to the grantee may be rebutted.[2] Accordingly, a grantor's possession was adverse where the parties were mistaken as to the location of the true boundary line.[3] Likewise, the use of a hunting camp property by the grantors for 22 years was hostile and adverse where the grantors intended to and mistakenly believed that they had reserved the camp property from a conveyance.[4]

Footnotes

1 Walker v. Easterling, 215 Miss. 429, 61 So. 2d 163, 39 A.L.R.2d 348 (1952).

2 Salter v. Cobb, 264 Ala. 609, 88 So. 2d 845 (1956); Carter v. Jones, 145 W. Va. 98, 112 S.E.2d 705 (1960).

3 Colley v. Carpenter, 172 Ind. App. 638, 362 N.E.2d 163 (1977).

4 Darling v. Ennis, 138 Vt. 311, 415 A.2d 228 (1980).

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3 Am. Jur. 2d Adverse Possession § 184

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b. Grantor and Grantee

§ 184. Possession by grantor—What constitutes hostile possession

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Grantor's possession as adverse possession against grantee, 39 A.L.R.2d 353

Under proper circumstances, a grantor may, by adverse possession, acquire title to land which the grantor has conveyed.[1] Thus, it is well settled that a grantor in permissive possession of land may originate a possession adverse to the grantee.[2] This is true even though the grantor conveys the land by a general warranty deed.[3] Where a grantor makes a conveyance, and later corrects such conveyance by a subsequent deed, the grantor thereafter will be considered in adverse possession of that part of the property which was included in the original deed but not included in the second conveyance.[4]

Observation:

The adverse possession of a grantor against a grantee differs from that originated by a stranger only in requiring stronger proof to sustain it.[5]

The hostility of the grantor's holding must be brought to the grantee's attention in such manner as to put the latter on notice of the grantor's intention to occupy the property in the grantor's own right.[6]Nothing short of an explicit disclaimer of the subservient relation of a grantor to a grantee and a notorious assertion of right in the grantor will be sufficient to change the character of the grantor's possession and render it adverse to the grantee.[7]

As a rule, open and notorious possession by a grantor will be deemed to be adverse where it is of such character as to be entirely inconsistent with the rights of the grantee.[8]Where a grantor is not in possession of the land at the time of the deed, the grantor's actual entry and use of the land thereafter will ordinarily be adverse to the grantee.[9]Thus, the grantor's entry after conveyance must be deemed to be adverse where there was no evidence that the grantor entered for or under the grantee, and the grantor acted in all respects as the sole owner, making leases, receiving rents, paying taxes, improving the property, etc.[10]

On the other hand, evidence of the cultivation or improvement of the land by a grantor after conveyance does not conclusively establish the hostile nature of possession, and such possession must be deemed permissive notwithstanding evidence of such acts.[11]That the grantor mortgaged the property after conveyance to the grantee does not conclusively show hostility.[12]Likewise, the payment of taxes by the grantor remaining in possession is not conclusive evidence of hostility of a claim, and adverse possession does not arise on evidence of such payment.[13]A grantor's possession that is permissive, as where the grantor is a tenant and pays rent, is not adverse and cannot support a claim of adverse possession.[14]That during the period of possession relied on, the grantor, by acts, declarations, or omissions, recognized a superior title in either the grantee or another ordinarily is sufficient to demonstrate that the grantor's possession was not under such claim of right as to ripen into title.[15]

CUMULATIVE SUPPLEMENT

Cases:

Rule that possession by permission is never adverse within the meaning of adverse possession statute applies with special force when a grantor of land later attempts to reclaim title from the grantee via adverse possession. K.S.A. 60–503. Ruhland v. Elliott, 353 P.3d 1124 (Kan. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Reinheimer v. Rhedans, 327 S.W.2d 823 (Mo. 1959); Carter v. Jones, 145 W. Va. 98, 112 S.E.2d 705 (1960).

2 Torgerson v. Rose, 339 N.W.2d 79 (N.D. 1983).

3 Carter v. Jones, 145 W. Va. 98, 112 S.E.2d 705 (1960).

4 Fox v. Windes, 127 Mo. 502, 30 S.W. 323 (1895).

5 Fort Wayne Smelting & Refining Works v. City of Fort Wayne, 214 Ind. 454, 14 N.E.2d 556 (1938); Rosenstihl v. Cherry, 114 Ohio St. 401, 4 Ohio L. Abs. 226, 151 N.E. 642 (1926).

6 Skelton v. Lewis, 453 So. 2d 703 (Miss. 1984).

7 Miller v. Hewell, 271 Ala. 286, 123 So. 2d 126 (1960).

As to open, notorious, and visible possession, see §§ 57 to 60.

As to when permissive possession changes to hostile possession, generally, see § 47.

8 Fort Wayne Smelting & Refining Works v. City of Fort Wayne, 214 Ind. 454, 14 N.E.2d 556 (1938); Great Southern Life Ins. Co. v. Dodson, 155 S.W.2d 379 (Tex. Civ. App. Amarillo 1941).

9 American Nat. Bank of Beaumont v. Wingate, 266 S.W.2d 934 (Tex. Civ. App. Beaumont 1953), writ refused n.r.e.

10 Walker v. Easterling, 215 Miss. 429, 61 So. 2d 163, 39 A.L.R.2d 348 (1952).

11 Turnipseed v. Moseley, 248 Ala. 340, 27 So. 2d 483, 170 A.L.R. 882 (1946); Bellamy v. Shryock, 211 Ark. 116, 199 S.W.2d 580 (1947).

12 Reid v. Reid, 219 Or. 500, 348 P.2d 29 (1959).

13 Steele v. Steele, 214 Ark. 500, 216 S.W.2d 875 (1949); Hoagland v. Fish, 238 S.W.2d 133 (Ky. 1951).

14 Walker v. McLaurin, 229 Miss. 425, 90 So. 2d 857 (1956).

15 Carney v. Loveday, 268 Mich. 640, 256 N.W. 577 (1934).

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3 Am. Jur. 2d Adverse Possession § 185

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c. Donor and Donee

§ 185. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Adverse possession under parol gift of land, 43 A.L.R.2d 6

Forms

Forms relating to parol gift, generally, see Am. Jur. Legal Forms 2d, Adverse Possession; Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

In the absence of a statute otherwise providing, a parol gift of land may ripen into title where accompanied by actual possession for the statutory period, and under such a gift, the donee's possession is adverse from its inception.[1] It has been recognized that as between a parol donee of land and the donor, or the donor's heirs, the donee's possession is adverse and need not be notorious

to ripen into title.[2]Generally, the execution of a mortgage by the donor after entry by the donee will not change the character of the donee's holding or operate to suspend the running of the statute of limitations in favor of the donee.[3]However, a different result has been reached where the parol donee consented to the donor's placing a mortgage on the donated land or recognized the validity of such mortgage.[4]

A claim of title to realty predicated on adverse possession under a parol gift can be established only by proof of the coexistence of all essential elements of adverse possession, that is, the possession must be actual, hostile, open, notorious, and visible, continuous, exclusive, and under a claim of right for the statutory period.[5]

Reminder:

In jurisdictions in which the particular statute governing the acquisition of title by adverse possession requires written evidence of title as color,[6]a parol gift of land may not ripen into title under adverse possession.[7]It has been held that a parol gift and holding of land as owner is sufficient to establish a claim of ownership as an element of adverse possession if actual color of title is not available.[8]

Footnotes

1 Ramey v. Ramey, 353 S.W.2d 191 (Ky. 1962); Southern Reynolds County School Dist. R-2 v. Callahan, 313 S.W.2d 35 (Mo. 1958).

2 Tenney v. Luplow, 103 Ariz. 363, 442 P.2d 107 (1968).

3 Harrelson v. Reaves, 219 S.C. 394, 65 S.E.2d 478, 43 A.L.R.2d 1 (1951).

4 Potter v. Smith, 68 Mich. 212, 35 N.W. 916 (1888).

5 Philbin v. Carr, 75 Ind. App. 560, 129 N.E. 19 (1920) (holding modified on other grounds by, Fraley v. Minger, 829 N.E.2d 476 (Ind. 2005)); Buford v. Logue, 832 So. 2d 594 (Miss. Ct. App. 2002).
As to requisite coexistence of all elements of adverse possession, generally, see § 9.

6 § 113.

7 Philbin v. Carr, 75 Ind. App. 560, 129 N.E. 19 (1920) (holding modified on other grounds by, Fraley v. Minger, 829 N.E.2d 476 (Ind. 2005)).

8 Buford v. Logue, 832 So. 2d 594 (Miss. Ct. App. 2002).

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3 Am. Jur. 2d Adverse Possession § 186

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5. Landlord and Tenant

§ 186. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Landlord and Tenant 14, 16

A.L.R. Library

Adverse possession of landlord as affected by tenant's recognition of title of third person, 38 A.L.R.2d 826

Forms

Forms relating to landlord or tenant, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

The rule is well settled that during the existence of the relation of landlord and tenant, a tenant is estopped to deny the landlord's title or to challenge or dispute it.[1] A tenant can in no case contest the right of the landlord to possession or defend such tenant by any claim or title adverse to the landlord during the time which the statute has to run.[2]

This is merely one application of the rule that a tenant cannot deny the landlord's title.[3]

The possession of a tenant is not deemed adverse to the landlord unless there has been a clear repudiation by the tenant holding under the landlord, with notice of such repudiation brought home to the landlord.[4]The adverse conduct on the part of the tenant necessarily furnishes the landlord with the legal right to enter and repossess the premises.[5]

Also as a general rule, the attornment of the tenant of an adverse claimant to the true owner will not affect the adverse possession of the original landlord,[6]at least where the owner knows of the landlord's claim, and the landlord is ignorant of the tenant's action.[7]

A landlord-tenant relationship does not arise by mere occupancy of the premises; absent an express or implied contractual agreement, with both privity of estate and privity of contract, the occupier is in adverse possession as a squatter.[8]

Footnotes

1 Am. Jur. 2d, Landlord and Tenant § 764.

2 Peyton v. Stith, 30 U.S. 485, 8 L. Ed. 200, 1831 WL 3986 (1831).
As to whether the actual possession generally necessary to acquire title by adverse possession may be effected through a tenant, see § 20.
As to tenant's acquisition of interests adverse to the landlord, see Am. Jur. 2d, Landlord and Tenant §§ 778, 779.

3 Missouri Pac. R. Co. v. Bozeman, 178 Ark. 902, 12 S.W.2d 895 (1929); Burroughs v. Smith, 8 S.W.2d 301 (Tex. Civ. App. Austin 1928), writ dismissed w.o.j., (Jan. 30, 1929).

4 § 188.

5 Gee v. Hatley, 114 Ark. 376, 170 S.W. 72 (1914); Burroughs v. Smith, 8 S.W.2d 301 (Tex. Civ. App. Austin 1928), writ dismissed w.o.j., (Jan. 30, 1929).

6 Kirby Lumber Corp. v. Laird, 231 F.2d 812 (5th Cir. 1956); Satterfield v. Peterson, 173 Neb. 618, 114 N.W.2d 376 (1962).

7 Kimble v. Willey, 204 F.2d 238, 38 A.L.R.2d 814 (8th Cir. 1953) (applying Arkansas law).

8 Crockett v. Deutsche Bank Nat. Trust, 16 A.3d 949 (D.C. 2011).

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3 Am. Jur. 2d Adverse Possession § 187

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5. Landlord and Tenant

§ 187. When possession of tenant becomes hostile

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Landlord and Tenant 14, 16

Forms

Forms relating to landlord or tenant, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

Although the rule is well settled that so long as the relation of landlord and tenant exists, the tenant cannot acquire an adverse title as against the landlord,[1] it is equally well settled that one who enters as tenant is not, merely because of that fact, precluded from subsequently holding adversely to the landlord.[2] To do so, however, it is necessary that the tenant renounce the idea of holding as tenant and set up and assert an exclusive right in him- or herself.[3] It is also essential that the landlord should have actual notice of the tenant's claim or that the tenant's acts of ownership should be of such open, notorious, and hostile character that the landlord must have known of it.[4] If a tenant has remained in possession under a claim of title for the statutory period, the authorities agree that the tenant is not estopped to assert title to the property.[5] In other words, a tenant may oust the landlord and hold adversely, and after notice of such adverse holding, the landlord's title may be barred by the continued adverse holding.[6]

Adverse title to property held under a lease may be secured by possession for the requisite period under a decree in partition which treats the tenant's title as a fee.[7]

Footnotes

1 § 186.

2 Worthen v. Rushing, 228 Ark. 445, 307 S.W.2d 890 (1957).
As to when permissive possession becomes adverse, generally, see § 47.
As to possession of tenant becoming adverse to landlord, see Am. Jur. 2d, Landlord and Tenant §§ 779, 780.

3 Worthen v. Rushing, 228 Ark. 445, 307 S.W.2d 890 (1957).

4 Worthen v. Rushing, 228 Ark. 445, 307 S.W.2d 890 (1957).

5 Peyton v. Stith, 30 U.S. 485, 8 L. Ed. 200, 1831 WL 3986 (1831).

6 Zeller's Lessee v. Eckert, 45 U.S. 289, 4 How. 289, 11 L. Ed. 979, 1846 WL 5696 (1846).

7 Townsend v. Boyd, 217 Pa. 386, 66 A. 1099 (1907).

3 Am. Jur. 2d Adverse Possession § 188

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5. Landlord and Tenant

§ 188. When possession of tenant becomes hostile—Sufficiency of disclaimer and notice of hostile holding

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Landlord and Tenant 14, 16

A.L.R. Library

Grantor's possession as adverse possession against grantee, 39 A.L.R.2d 353 (Payment or nonpayment of rent by grantor)

Acts of exclusive ownership by the tenant must be made manifest to the landlord in some way.[1] The mere fact that a tenant remains in possession after the expiration of the term, without any express repudiation of the relation created by the lease, is insufficient to show that the tenant holds adversely to the landlord even though the tenant may secretly intend to do so.[2] Nor can an adverse possession by the tenant be predicated on the failure to pay rent[3] unless, in connection therewith, the landlord has been notified that the tenant claims title.[4] Evidence that lessees stopped making lease payments is insufficient to establish that they clearly, positively, and continuously disavowed the lessor's title with the lessor's knowledge, in the lessees' action to quiet title by adverse possession, where the lessees were required to establish that they took affirmative steps to repudiate the lessor's title, which they did not do; the lessees' use of the land remained essentially the same the entire time; and they did not disavow the lessor's ownership when to do so would have been consistent with their claim of adverse possession.[5]

Footnotes

1 Junkermann v. Carruth, 620 S.W.2d 165 (Tex. Civ. App. Corpus Christi 1981).

2 Carson v. Broady, 56 Neb. 648, 77 N.W. 80 (1898).

3 Smith v. Newman, 62 Kan. 318, 62 P. 1011 (1900).

4 Greenwood v. Moore, 79 Miss. 201, 30 So. 609 (1901); Ross v. McManigal, 61 Neb. 90, 84 N.W. 610 (1900).

5 Hutchinson v. Taft, 2010 WY 5, 222 P.3d 1250 (Wyo. 2010).

End of Document

3 Am. Jur. 2d Adverse Possession § 189

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Adverse Possession

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C. Effect of Particular Relationships Between Parties

5. Landlord and Tenant

§ 189. Possession under tenant

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Landlord and Tenant 14, 16

The possession of one entering under a tenant is as a general rule regarded as subservient and not adverse to the landlord to the same extent as that of the tenant, and placed in the shoes of the tenant, the occupant is bound by the allegiance a tenant owes a landlord and cannot disclaim such allegiance without notice to the landlord.[1] However, where one enters under a tenant without knowledge of the tenancy, and irrespective of it, in the assertion of a title on its face adverse to the lessor, the possession will be hostile if unequivocal acts and declarations manifest an intention to hold against all others.[2]

Footnotes

1 Missouri Pac. R. Co. v. Bozeman, 178 Ark. 902, 12 S.W.2d 895 (1929); Burroughs v. Smith, 8 S.W.2d 301 (Tex. Civ. App. Austin 1928), writ dismissed w.o.j., (Jan. 30, 1929).

2 Gee v. Hatley, 114 Ark. 376, 170 S.W. 72 (1914); Burroughs v. Smith, 8 S.W.2d 301 (Tex. Civ. App. Austin 1928), writ dismissed w.o.j., (Jan. 30, 1929).

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3 Am. Jur. 2d Adverse Possession § 190

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C. Effect of Particular Relationships Between Parties

6. Cotenants

a. In General; as Between Cotenants

§ 190. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants who are unaware of cotenancy, 27 A.L.R.4th 420
Adverse possession between cotenants, 82 A.L.R.2d 5
Adverse possession under parol gift of land, 43 A.L.R.2d 6 (Under parol gift)

The general principle is that there is a relation of trust between cotenants, each having an equal right of entry and possession.[1]Thus, every cotenant has the right to enter into and occupy the common property and every part thereof provided in so doing, the cotenant does not exclude fellow cotenants or otherwise deny them some right to which they are entitled as cotenants; and the other tenants, on their part, may safely assume, until something occurs of which they must take notice, and which indicates the contrary, that the possession taken is held as a cotenant and is, in law, the possession of all cotenants.[2]This proposition is based on the supposition that the entry is made either eo nomine as a cotenant or that it is silently made, without any particular avowal in regard to it, or without notice to a cotenant that it is adverse.[3]In the absence of facts showing that one cotenant in sole possession holds such possession in opposition to the rights of other cotenants, the occupancy will be

presumed to be that of a cotenant,[4]and it is further presumed that one tenant in common holds property for the benefit of the others.[5]Accordingly, possession by one cotenant is lawful and is not adverse to the other cotenants in the absence of some repudiation, notice of an adverse claim, or ouster.[6]

Practice Tip:

Whether there has been a repudiation of a nonpossessory cotenant's title generally is a question of fact, but when the pertinent facts are undisputed, repudiation may be established as a matter of law.[7]

One tenant in common cannot by mere exclusive possession acquire the title of his or her cotenant.[8]A tenant can acquire sole ownership of property by invoking the doctrine of adverse possession against a cotenant or cotenants, where the estate is a tenancy in common, although there is a heightened level of proof necessary to establish the claim.[9]A cotenant who claims exclusive possession may bar a cause of action brought by other cotenants by proving he or she has adversely possessed the property.[10]Indeed, the presumption is strongly against every claim by a cotenant who seeks to convert the circumstance of an apparently individual possession into an advantage over associates.[11]

Observation:

Some courts deem possession to be adverse although both parties were unaware of the cotenancy[12]although there is authority to the contrary.[13]

Ordinarily, if a possessor takes sole possession of the premises as exclusive owner prior to the time the cotenancy arises, the continued sole possession under a claim of exclusive ownership after the cotenancy arises is adverse to the cotenants.[14]

The life estate interest that a joint tenant owns, in a joint tenancy with full rights of survivorship, can be lost by adverse possession.[15]A heightened level of proof is necessary to establish adverse possession of the life estate in the context of a joint tenancy with full rights of survivorship; not only must a tenant show possession that was actual, visible, open, notorious, exclusive, continuous, hostile, and uninterrupted for the statutory period; the tenant must also intend to possess the premises to the exclusion of his or her cotenant, and the cotenant must have knowledge or notice of this intent as clearly evidenced by acts or declarations.[16]

Footnotes

1 Am. Jur. 2d, Cotenancy and Joint Ownership § 3.

2 Barry v. Thomas, 273 Ala. 527, 142 So. 2d 918 (1962); Hare v. Chisman, 230 Ind. 333, 101 N.E.2d 268 (1951).

3 Eckhardt v. Eckhardt, 43 Tenn. App. 1, 305 S.W.2d 346 (1957).

4 Cook v. Rochford, 60 So. 2d 531, 32 A.L.R.2d 1210 (Fla. 1952); Wengel v. Wengel, 270 Mich. App. 86, 714 N.W.2d 371 (2006); Hoverson v. Hoverson, 216 Minn. 228, 12 N.W.2d 501 (1943).

5 Curtis v. Dorn, 123 Haw. 301, 234 P.3d 683 (Ct. App. 2010); Tilley v. Unopened Succession of Howard, 976 So. 2d 851 (La. Ct. App. 2d Cir. 2008), writ denied, 983 So. 2d 922 (La. 2008); Porter v. Marx, 179 A.D.2d 962, 579 N.Y.S.2d 219 (3d Dep't 1992).

The possession of one tenant in common is prima facie presumed to be the possession of all. Bohanon v. Edwards, 970 So. 2d 777 (Ala. Civ. App. 2007).

6 Bohanon v. Edwards, 970 So. 2d 777 (Ala. Civ. App. 2007); Wengel v. Wengel, 270 Mich. App. 86, 714 N.W.2d 371 (2006); King Ranch, Inc. v. Chapman, 118 S.W.3d 742 (Tex. 2003).

7 Dyer v. Cotton, 333 S.W.3d 703 (Tex. App. Houston 1st Dist. 2010).

8 Hacienda Ranch Homes, Inc. v. Superior Court, 198 Cal. App. 4th 1122, 131 Cal. Rptr. 3d 498 (3d Dist. 2011), as modified on denial of reh'g, (Sept. 28, 2011).

9 Wengel v. Wengel, 270 Mich. App. 86, 714 N.W.2d 371 (2006).

10 Kapner v. Meadowlark Ranch Ass'n, 116 Cal. App. 4th 1182, 11 Cal. Rptr. 3d 138 (2d Dist. 2004).

11 Marshall v. Callahan, 241 Mo. App. 336, 229 S.W.2d 730 (1950).

12 Brown v. Phillips Petroleum Co., 144 S.W.2d 358 (Tex. Civ. App. Fort Worth 1940).

13 Denton v. Denton, 627 S.W.2d 124, 27 A.L.R.4th 413 (Tenn. Ct. App. 1981).

14 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

15 Wengel v. Wengel, 270 Mich. App. 86, 714 N.W.2d 371 (2006).

As to life tenancies and remainders, see §§ 221 to 225.

16 Wengel v. Wengel, 270 Mich. App. 86, 714 N.W.2d 371 (2006).

End of Document

3 Am. Jur. 2d Adverse Possession § 191

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C. Effect of Particular Relationships Between Parties

6. Cotenants

a. In General; as Between Cotenants

§ 191. When possession becomes hostile

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants who are unaware of cotenancy, 27 A.L.R.4th 420
Adverse possession between cotenants, 82 A.L.R.2d 5

The presumption that one tenant in common holds the property for the benefit of others can be rebutted by a showing of adverse possession.[1]The presumption that the possession of a cotenant is not hostile to other cotenants[2]continues until a possession legally adverse to the possessor's cotenants is established.[3]To terminate the presumption, there must be some hostile act, conduct, or declaration on the part of the possessor amounting to a repudiation of the cotenants' rights and an assertion of exclusive title in the possessor, of which the cotenants have knowledge or notice.[4]Because possession by a cotenant is not ordinarily adverse to other cotenants, each having an equal right to possession, a cotenant claiming adverse possession must give actual notice to other cotenants that his or her possession is adverse to their interests or commit sufficient acts of hostility so that their knowledge of his or her adverse claim may be presumed.[5]Where a co-owner goes into and continues possession under a recorded instrument apparently conveying title even though the purported conveyance may be invalid, the recorded instrument

together with the acts of possession constitute notice to other co-owners; the possession is then regarded as hostile to the claims of the other co-owners, rebutting any presumption that possession is for the benefit of all co-owners.[6]The statute of limitations begins to run in favor of a cotenant in possession against a cotenant out of possession from the time there is an ouster of the latter by the former.[7]The statutory period of time for an adverse possession claim by a cotenant does not begin to run until knowledge of the adverse claim has been brought home to other cotenants directly or by such notorious acts of an unequivocal character that notice may be presumed.[8]

Where once it appears that the party occupying the premises holds not in recognition of, but in hostility to, the rights of cotenants, the possession ceases to amount to constructive possession by them, becomes adverse, and if maintained for the period provided for by the statute of limitations, will vest in the possessor a sole title by adverse possession to the premises.[9]

Footnotes

1 Porter v. Marx, 179 A.D.2d 962, 579 N.Y.S.2d 219 (3d Dep't 1992).

2 § 190.

3 Franks Petroleum, Inc. v. Babineaux, 446 So. 2d 862 (La. Ct. App. 2d Cir. 1984).

4 Barry v. Thomas, 273 Ala. 527, 142 So. 2d 918 (1962); Linebarger v. Late, 214 Ark. 278, 216 S.W.2d 56 (1948); Cary-Glendon Coal Co. v. Warren, 303 Ky. 846, 198 S.W.2d 499 (1946); BP America Production Co. v. Marshall, 342 S.W.3d 59 (Tex. 2011).

5 Trice v. Trice, 91 Ark. App. 309, 210 S.W.3d 147 (2005).

6 Tilley v. Unopened Succession of Howard, 976 So. 2d 851 (La. Ct. App. 2d Cir. 2008), writ denied, 983 So. 2d 922 (La. 2008).

7 Fallon v. Davidson, 137 Colo. 48, 320 P.2d 976 (1958); Hare v. Chisman, 230 Ind. 333, 101 N.E.2d 268 (1951).

8 Sherman v. Wallace, 88 Ark. App. 229, 197 S.W.3d 10 (2004).

9 Smith v. Tremaine, 221 Or. 33, 350 P.2d 180, 82 A.L.R.2d 1 (1960).

3 Am. Jur. 2d Adverse Possession § 192

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C. Effect of Particular Relationships Between Parties

6. Cotenants

a. In General; as Between Cotenants

§ 192. What constitutes hostile possession

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants who are unaware of cotenancy, 27 A.L.R.4th 420
Adverse possession between cotenants, 82 A.L.R.2d 5

The possession of a cotenant may become hostile if by acts and conduct the possessor disseises the cotenants by repudiating their title and claiming adversely to them.[1]The possession is not hostile unless there exists in the mind of the possessor the intent and determination to hold the premises for the possessor as of the time in question as well as for the future, and to the exclusion of cotenants (or some of them), so as to render the existing possession hostile in fact.[2]Moreover, notice to the disseised cotenants of the repudiation of their rights must be brought home to them.[3]The mere intention of a cotenant, unannounced, is not sufficient to support a claim of adverse title.[4]The establishment of adverse possession between cotenants depends primarily on the intent and conduct of the possessor rather than on the intent of other cotenants.[5]An adverse claim by a cotenant against fellow cotenants cannot be established by inference.[6]

Observation:

When determining whether a cotenant's possession is adverse to other cotenants, for purposes of adverse possession, the relationship of the parties, their reasonable access to the property and opportunity or necessity for dealing with it, their right to rely upon conduct and assurances of the tenant in possession, kinship, business transactions directly or incidentally touching the primary subject matter, silence when one should have spoken, natural inferences arising from indifference, and other means of conveying or concealing intent may be important in a particular case but not controlling in another; what a designated plaintiff or defendant had in mind when he or she consummated an act or engaged in a course of conduct often depends upon the personal equation and the individual's method of expression, and there can therefore be no "open and shut" rule by which purpose can be measured.[7] Where there is a family relation between cotenants, stronger evidence of adverse possession is required than where no such relation exists.[8]

Footnotes

1 Mercer v. Wayman, 9 Ill. 2d 441, 137 N.E.2d 815 (1956); Replogle v. Replogle, 350 S.W.2d 735 (Mo. 1961). As to what constitutes ouster or exclusion of one cotenant by another, see Am. Jur. 2d, Cotenancy and Joint Ownership § 50.

2 Reed v. Bachman, 61 W. Va. 452, 57 S.E. 769 (1907).

3 § 195.

4 Cary-Glendon Coal Co. v. Warren, 303 Ky. 846, 198 S.W.2d 499 (1946).

5 Wilson v. Wilson, 250 Ky. 247, 62 S.W.2d 572 (1933).

6 Mercer v. Wayman, 9 Ill. 2d 441, 137 N.E.2d 815 (1956).

7 Sherman v. Wallace, 88 Ark. App. 229, 197 S.W.3d 10 (2004).

8 Trice v. Trice, 91 Ark. App. 309, 210 S.W.3d 147 (2005). As to effect of family relationship, generally, see §§ 169 to 173.

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3 Am. Jur. 2d Adverse Possession § 193

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C. Effect of Particular Relationships Between Parties

6. Cotenants

a. In General; as Between Cotenants

§ 193. What constitutes hostile possession—Ouster of cotenants

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5
Adverse possession under parol gift of land, 43 A.L.R.2d 6

Forms

Forms relating to cotenants: see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

In order to adversely possess the interests of cotenants, an adverse possessor must prove ouster; ouster is unequivocal notice by one cotenant that he or she intends to adversely possess the claims of his or her fellow cotenants.[1] The presumption that cotenants occupy the premises in common may be overcome only by conduct of one cotenant which constitutes an ouster or

disseisin of the other cotenants.[2]Thus, before the possession of one tenant in common can be adverse to the other cotenants, there must be a disseisin or ouster by some outward act of ownership of an unequivocal character, overt or notorious, and of such nature as to impart information and notice to the cotenants that an adverse possession and disseisin are intended to be asserted by the tenant in possession.[3]The cotenant claiming through adverse possession must show certain essential requirements which amount to an ouster of the other cotenant: (1) a clear intent to claim adversely; (2) adverse possession in fact; and (3) knowledge or notice of the hostile holding brought home to the other cotenant or cotenants.[4]The possession of a tenant in common does not become adverse to the cotenant until he or she is actually ousted, the adverse character of the possession of the claiming tenant is actually known to the cotenant, or the possession of the claiming tenant is so open and notorious in its hostility and exclusiveness as to put the cotenant on notice of its adverse character.[5]A parent in cotenancy with children may acquire title as against them by adverse possession by an ouster from possession of a living spouse that continues against the heirs of the spouse.[6]The acts relied on to establish an ouster must be of an unequivocal nature and so distinctly hostile to the rights of the other cotenants that the intention to disseise is clear and unmistakable.[7]

Practice Tip:

While an ouster of one cotenant by another is produced by acts of the same general character as will produce any other ouster,[8]evidence of hostile occupancy by a cotenant must be stronger than that which would be required to establish a title by adverse possession in a stranger.[9]Thus, proof of ouster of a cotenant by another must be stronger than in the case of strangers.[10]Moreover, when there is a family relation between cotenants, stronger evidence of adverse possession is required.[11]

In order that one of several cotenants may acquire title by adverse possession as against the others, the possession also must be of such actual, open, notorious, and exclusive character as to amount to an ouster of the other cotenants.[12]The open, notorious, continuous, and exclusive possession by one cotenant with the use and exercise of authority incident to exclusive ownership may presume ouster[13]although the mere possession[14]or mere use and occupation of the land by a cotenant will not ordinarily constitute ouster.[15]Thus, mere exclusive possession, accompanied by no act that can amount to an ouster of the other cotenant, will not be held to amount to a disseisin of such cotenant.[16]In addition, the mere recording of a deed, without any change in possession or notice to an allegedly ousted cotenant, does not constitute ouster.[17]

CUMULATIVE SUPPLEMENT

Cases:

Absent ouster, period of 20 years of continuous exclusive possession by cotenant in common is required before that cotenant may be said to acquire full title by adverse possession. McKinney's RPAPL § 541. Lindine v. Iasenza, 130 A.D.3d 1329, 2015 WL 4472284 (3d Dep't 2015).

Because cotenants in an undivided estate have an equal right to enter upon the common estate and a corollary right to possession, a cotenant seeking to establish title by adverse possession must prove, in addition to the usual adverse possession requirements,

an ouster of the cotenant not in possession or repudiation of the cotenancy relationship. V.T.C.A., Civil Practice & Remedies Code § 16.026(a). Frazier v. Donovan, 420 S.W.3d 463 (Tex. App. Tyler 2014).

[END OF SUPPLEMENT]

Footnotes

1 Williams v. Estate of Williams ex rel. Fairley, 952 So. 2d 950 (Miss. Ct. App. 2006).

2 Curtis v. Dorn, 123 Haw. 301, 234 P.3d 683 (Ct. App. 2010).

3 Preciado v. Wilde, 139 Cal. App. 4th 321, 42 Cal. Rptr. 3d 792 (2d Dist. 2006); Mercer v. Wayman, 9 Ill. 2d 441, 137 N.E.2d 815 (1956); Bank of America, N.A. v. 414 Midland Ave. Associates, LLC, 78 A.D.3d 746, 911 N.Y.S.2d 157 (2d Dep't 2010).

4 Wailuku Agribusiness Co., Inc. v. Ah Sam, 112 Haw. 241, 145 P.3d 784 (Ct. App. 2006), aff'd in part, rev'd in part on other grounds, 114 Haw. 24, 155 P.3d 1125 (2007), as amended, (Apr. 12, 2007).

5 Lynn v. Kelley, 974 So. 2d 309 (Ala. Civ. App. 2007).

6 Ruick v. Twarkins, 171 Conn. 149, 367 A.2d 1380 (1976).

7 Baker v. Clowser, 158 Iowa 156, 138 N.W. 837 (1912); Ferenbaugh v. Ferenbaugh, 104 Ohio St. 556, 136 N.E. 213 (1922).

8 Harjo's Heirs v. Standley, 1956 OK 286, 305 P.2d 864 (Okla. 1956).
As to ouster of owner, generally, see §§ 63, 64.

9 Moore v. Cole, 200 Tenn. 43, 289 S.W.2d 695 (1956).

10 Preciado v. Wilde, 139 Cal. App. 4th 321, 42 Cal. Rptr. 3d 792 (2d Dist. 2006); Smith v. Lemp, 31 Del. Ch. 1, 63 A.2d 169 (1949).

11 Heirs at Law of Butler v. Butler, 2009 Ark. App. 660, 345 S.W.3d 225 (2009).

12 Watson v. Little, 224 S.C. 359, 79 S.E.2d 384 (1953); Brevard v. Fortune, 221 S.C. 117, 69 S.E.2d 355 (1952).

13 Bank of America, N.A. v. 414 Midland Ave. Associates, LLC, 78 A.D.3d 746, 911 N.Y.S.2d 157 (2d Dep't 2010); Wells v. Coursey, 197 S.C. 483, 15 S.E.2d 752 (1941); Eckhardt v. Eckhardt, 43 Tenn. App. 1, 305 S.W.2d 346 (1957).
A cotenant must give actual notice to other cotenants that his or her possession is adverse to their interests or commit sufficient acts of hostility so that their knowledge of his or her adverse claim may be presumed. Sutton v. Gardner, 2011 Ark. App. 737, 387 S.W.3d 185 (2011).

14 Preciado v. Wilde, 139 Cal. App. 4th 321, 42 Cal. Rptr. 3d 792 (2d Dist. 2006); Smith v. Lemp, 31 Del. Ch. 1, 63 A.2d 169 (1949).

15 Fallon v. Davidson, 137 Colo. 48, 320 P.2d 976 (1958).

16 Hare v. Chisman, 230 Ind. 333, 101 N.E.2d 268 (1951).

17 Bank of America, N.A. v. 414 Midland Ave. Associates, LLC, 78 A.D.3d 746, 911 N.Y.S.2d 157 (2d Dep't 2010).

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6. Cotenants

a. In General; as Between Cotenants

§ 194. What constitutes hostile possession—Sufficiency of ouster

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5

In establishing title in a cotenant by adverse possession, an ouster or its equivalent and an exclusion of the other cotenants from possession must be shown.[1] Several courts have said that the term "ouster" may denote either an actual turning out or an exclusive possession coupled with some act amounting to a total denial of the other's rights.[2]

One cotenant can prove ouster of another cotenant by acts of an adverse character, such as claiming the whole for him- or herself, denying the title of his or her companion, or refusing to permit him or her to enter.[3]

A party who asserts a claim of title by adverse possession against a cotenant has the burden of not only proving the usual elements of prescription, but also must prove that the adverse possessor has effected an actual ouster, retains exclusive possession after demand, or gives his or her cotenant express notice of the adverse possession.[4]

Observation:

In order to afford the basis of title by adverse possession, ouster need not extend to all property of the cotenants or to the whole of any tract claimed by them. It may be restricted to a part of a tract and result in the acquisition of adverse title thereto.[5]

Footnotes

1 Curtis v. Barber, 131 Iowa 400, 108 N.W. 755 (1906); Susquehanna Transmission Co. of Md. v. St. Clair, 113 Md. 667, 77 A. 1119 (1910).

2 Hed v. Pullara, 128 Colo. 244, 261 P.2d 509 (1953).

3 Hacienda Ranch Homes, Inc. v. Superior Court, 198 Cal. App. 4th 1122, 131 Cal. Rptr. 3d 498 (3d Dist. 2011), as modified on denial of reh'g, (Sept. 28, 2011).

4 Williams v. Screven Wood Company, Inc., 279 Ga. 609, 619 S.E.2d 641 (2005).

5 Stevenson v. Anderson, 87 Ala. 228, 6 So. 285 (1889).

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6. Cotenants

a. In General; as Between Cotenants

§ 195. What constitutes hostile possession—Requirement of actual knowledge of hostile claim

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants who are unaware of cotenancy, 27 A.L.R.4th 420
Adverse possession between cotenants, 82 A.L.R.2d 5

Cotenants in possession who claim adversely are required to prove either that they or their predecessors in interest gave actual notice to other cotenants or their predecessors that the claimants' possession was hostile to them or that the requirement of notice was eliminated by exceptional circumstances, such as that the cotenants out of possession had knowledge from other sources that the property was claimed adversely.[1] Thus, it is declared in many cases that before the possession of a cotenant can become adverse to cotenants, the latter must have knowledge that the possessor is claiming exclusive ownership and is holding the premises adversely to them,[2] and adverse possession is not established where a cotenant out of possession is never informed of a claim against that tenant's interest.[3]

Mere knowledge by cotenants out of possession of the obvious fact of possession by one cotenant does not amount to proof of knowledge that the one in possession was claiming adversely.[4]Thus, an entry on real property by a cotenant claiming an adverse possession against other cotenants can never become the foundation of title until the other cotenants first have had actual knowledge of the repudiation of their rights.[5]There must be an express denial by the cotenant in sole possession of the title or right to possession of a fellow cotenant brought home to the knowledge of the latter.[6]

Caution:

The requirement of actual knowledge by other cotenants of the repudiation of their rights is particularly applicable where there is a family or blood relationship or other elements of trust and confidence between the cotenants.[7]

Footnotes

1 Sherman v. Wallace, 88 Ark. App. 229, 197 S.W.3d 10 (2004); City and County of Honolulu v. Bennett, 57 Haw. 195, 552 P.2d 1380 (1976); Harkleroad v. Linkous, 281 Va. 12, 704 S.E.2d 381 (2011).
As to sufficiency of constructive notice of adverse occupancy by a cotenant, see § 196.

2 Draper v. Sewell, 263 Ala. 250, 82 So. 2d 303 (1955); Williams v. Screven Wood Company, Inc., 279 Ga. 609, 619 S.E.2d 641 (2005).

3 Steele v. Mack, 341 So. 2d 1322 (Miss. 1977).

4 Mercer v. Wayman, 9 Ill. 2d 441, 137 N.E.2d 815 (1956).

5 Holbrook v. Carter, 19 Utah 2d 288, 431 P.2d 123 (1967).

6 Hirsch v. Patterson, 269 Ark. 532, 601 S.W.2d 879 (1980).

7 Baxter v. Young, 229 Ark. 1035, 320 S.W.2d 640 (1959).

3 Am. Jur. 2d Adverse Possession § 196

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C. Effect of Particular Relationships Between Parties

6. Cotenants

a. In General; as Between Cotenants

§ 196. What constitutes hostile possession—Sufficiency of constructive notice of hostile claim

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5

The doctrine of many cases and the prevailing rule is that the possession may be legally adverse to the possessor's cotenants although they do not have actual knowledge of the fact of adverse possession.[1] Actual notice of an adverse claim may not be necessary when a cotenant's use and claim of title are so long continued, open, notorious, and exclusive as to raise an inference that notice has been brought to the attention of the cotenant, but it is only when those facts are inconsistent with the existing title in others that such inference will be raised.[2] On the other hand, the knowledge of the hostile attitude of the possessor is not to be presumed but must be shown by such proof as will preclude all doubt of knowledge on the part of the cotenant who is out of possession.[3] In any event, notice of the adverse possession must be clearly brought home to the cotenants out of possession.[4] Thus, in limited circumstances, the notice requirement for a tenant claiming property by adverse possession will be satisfied by constructive notice to the other cotenants and open and notorious possession.[5]

The knowledge chargeable to cotenants out of possession may arise from a disavowal or disclaimer by the adverse possessor of any right in the cotenants,[6] or it may arise from acts or circumstances attending such adverse possession which are overt, notorious, and unequivocal in their character and import.[7] A judicial proceeding involving land owned in cotenancy may charge cotenants with notice that a cotenant who is in sole possession claims and holds the property adversely to the others, and indeed, it ordinarily does so charge the cotenants out of possession where the fact of an exclusive claim appears from the proceeding.[8]

Observation:

From acts of an adverse claimant that are overt, notorious, and unequivocal, it is the duty of the other cotenants to be informed and to draw such reasonable inferences as prudent persons possessed of, and interested in, like information would naturally do, and cotenants out of possession cannot prevent the operation of the statute of limitations by proving that they did not know of the facts affecting their interest or, knowing of them, did not draw correct conclusions therefrom.[9]

Footnotes

1 Mann v. Mann, 353 Mo. 619, 183 S.W.2d 557 (1944); Vasquez v. Meaders, 156 Tex. 28, 291 S.W.2d 926 (1956).
As to requirement of actual knowledge of hostile occupancy by cotenant, see § 195.

2 DeFoor v. DeFoor, 290 Ga. 540, 722 S.E.2d 697 (2012); Evans v. Covington, 795 S.W.2d 806 (Tex. App. Texarkana 1990).

3 Schwab v. Wyss, 136 Kan. 54, 12 P.2d 719 (1932).

4 DeFoor v. DeFoor, 290 Ga. 540, 722 S.E.2d 697 (2012); McCarthy v. George, 623 S.W.2d 772 (Tex. App. Fort Worth 1981), writ refused n.r.e., (Mar. 10, 1982) (insufficient notice).

5 Wailuku Agribusiness Co., Inc. v. Ah Sam, 114 Haw. 24, 155 P.3d 1125 (2007), as amended, (Apr. 12, 2007); Harkleroad v. Linkous, 281 Va. 12, 704 S.E.2d 381 (2011).

6 Mercer v. Wayman, 9 Ill. 2d 441, 137 N.E.2d 815 (1956).

7 Wilkerson v. Thomas, 121 Cal. App. 2d 479, 263 P.2d 678 (2d Dist. 1953); Cook v. Rochford, 60 So. 2d 531, 32 A.L.R.2d 1210 (Fla. 1952); Mercer v. Wayman, 9 Ill. 2d 441, 137 N.E.2d 815 (1956).

8 Derryberry v. Sims, 267 Ark. 846, 591 S.W.2d 662 (Ct. App. 1979); Ruick v. Twarkins, 171 Conn. 149, 367 A.2d 1380 (1976).

9 Schwab v. Wyss, 136 Kan. 54, 12 P.2d 719 (1932); Severson v. McKenzie, 122 Neb. 827, 241 N.W. 774 (1932).

3 Am. Jur. 2d Adverse Possession § 197

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a. In General; as Between Cotenants

§ 197. What constitutes hostile possession—Acts of ownership

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5

The performance by a possessor of ordinary acts of ownership on or in respect of the land does not establish that the possession is adverse to the cotenants whether or not they have notice of such acts.[1] For this reason, whether the acts of ownership will be such as to break and dissolve the unity of possession, constitute an adverse possession as against the cotenants, and amount to a disseisin depends on the intent with which they are done and on their notoriety and essential character.[2] Accordingly, it is a general rule that the entry of a cotenant on the common property, even if the possessor takes the rents or profits without accounting or paying for any share of it, will not ordinarily be considered as adverse to other cotenants and an ouster of them.[3] Rather, such acts will be construed in support of the common title.[4] Intention to claim land to the exclusion of the cotenant, for purposes of the hostility element of adverse possession, may be shown by the acts of the claimant.[5] Although the exclusive taking of the profits by one cotenant for a long period of time, with the knowledge of the other cotenant, may raise a natural

presumption of ouster on which the jury may find ouster to exist, the law will not, merely from this fact, raise a presumption of ouster.[6]

Generally, a cotenant claiming adverse possession must show a definite and continuous assertion of an adverse right by overt acts of unequivocal character clearly indicating an assertion of ownership of the premises to the exclusion of the rights of the other cotenants.[7]A cotenant's sole possession of the land becomes adverse to fellow cotenants by the possessor's repudiation or disavowal of the relation of cotenancy between them, and any act or conduct signifying the intention to hold, occupy, and enjoy the premises exclusively, and of which the cotenant out of possession has knowledge, or of which there is sufficient information to put such cotenant on inquiry, amounts to an ouster of such cotenant.[8]

Footnotes

1 Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App. San Antonio 1981).

2 Torrez v. Brady, 37 N.M. 105, 19 P.2d 183 (1932).

3 Cary-Glendon Coal Co. v. Warren, 303 Ky. 846, 198 S.W.2d 499 (1946).

4 Cary-Glendon Coal Co. v. Warren, 303 Ky. 846, 198 S.W.2d 499 (1946).

5 Harkleroad v. Linkous, 281 Va. 12, 704 S.E.2d 381 (2011).

6 Hare v. Chisman, 230 Ind. 333, 101 N.E.2d 268 (1951).

7 Sowers v. Keedy, 135 Md. 448, 109 A. 143 (1919); Gill v. Fletcher, 74 Ohio St. 295, 78 N.E. 433 (1906).

8 Hurst v. J.M. Griffin & Sons, 209 Miss. 381, 46 So. 2d 440 (1950), error overruled, 209 Miss. 381, 47 So. 2d 811 (1950).

3 Am. Jur. 2d Adverse Possession § 198

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6. Cotenants

a. In General; as Between Cotenants

§ 198. What constitutes hostile possession—Particular acts of ownership

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5

Where one cotenant occupies the common property notoriously as the sole owner, using it exclusively, improving it, and taking to such cotenant's own use the rents and profits, or otherwise exercising over it such acts of ownership as manifest unequivocally an intention to ignore and repudiate any right in other cotenants, such occupation or acts and claim of sole ownership will amount to a disseisin of the other cotenants, and the possession will be regarded as adverse from the time they have knowledge of such acts or occupation and of the claim of exclusive ownership.[1] However, leasing out the use and possession of the entire premises is not in itself an ouster or disseisin of cotenants, nor is it sufficient to establish an adverse possession against them.[2] Whatever significance attaches to the making of improvements on the land depends on their nature and extent and on the particular situation presented, and the making of improvements does not in ordinary circumstances provide a decisive indication of possession adverse to other cotenants.[3] Although payment of real estate taxes by the cotenant in possession may not be a prerequisite to

acquiring title by adverse possession, it is proper to consider payment of taxes as a factor in determining whether a claim of ownership exists or a claim is knowingly adverse,[4] but the fact of payment of taxes may be inadequate or not given much weight.[5]

The recordation of a special warranty deed from the defendant cotenant, which granted one acre of the 60-acre tract at issue to her daughter, after the plaintiff cotenants had acquired an interest in the property, did not give the plaintiff constructive notice that their cotenant relative claimed an interest adverse to theirs since record notice goes forward, not backwards, and the law does not require a landowner to constantly examine the records to guard against instruments affecting title.[6] Many cases have held that the act of attempting to convey the premises or a portion thereof to a stranger does not in itself establish that the grantor's possession is hostile to other cotenants[7] although such act may justify an inference that the claimant asserts exclusive title to the land.[8] Nor is the act of mortgaging the property in itself conclusive evidence of an ouster,[9] but it is some evidence of an intention to assert exclusive title in the possessor.[10]

Footnotes

1 Brewer v. Brewer, 238 N.C. 607, 78 S.E.2d 719, 40 A.L.R.2d 763 (1953); Preston v. Preston, 1949 OK 59, 201 Okla. 555, 207 P.2d 313 (1949).

2 Dunlavy v. Lowrie, 372 Ill. 622, 25 N.E.2d 67 (1939).

3 Heiselt v. Heiselt, 10 Utah 2d 126, 349 P.2d 175 (1960); Fritch v. Fritch, 53 Wash. 2d 496, 335 P.2d 43 (1959).

4 Renensland v. Ellenberger, 1 Kan. App. 2d 659, 574 P.2d 217 (1977).

5 Apodaca v. Tome Land & Imp. Co. (NSL), 91 N.M. 591, 577 P.2d 1237 (1978); Poenisch v. Quarnstrom, 361 S.W.2d 367 (Tex. 1962).

6 Spiller v. Woodard, 809 S.W.2d 624 (Tex. App. Houston 1st Dist. 1991).

7 Wheeler v. Harris, 232 Ark. 469, 339 S.W.2d 99 (1960); Moore v. Cole, 200 Tenn. 43, 289 S.W.2d 695 (1956).

8 Sperry v. Tolley, 114 Utah 303, 199 P.2d 542 (1948).

9 Lambert v. Hemler, 244 Ill. 254, 91 N.E. 435 (1910).

10 Toomer v. Murphy, 198 Ark. 610, 129 S.W.2d 937 (1939); Preston v. Preston, 1949 OK 59, 201 Okla. 555, 207 P.2d 313 (1949).

End of Document

3 Am. Jur. 2d Adverse Possession § 199

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a. In General; as Between Cotenants

§ 199. What constitutes hostile possession—Possession under deed or color of title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5

The taking and recording of a deed by one cotenant from a third person will not have any effect as an ouster of another cotenant as would lay the foundation for the commencement of an adverse possession unless accompanied and followed by a hostile claim of which the cotenant out of possession had knowledge and by acts of possession not only inconsistent with but also in exclusion of the continuing right of the cotenant out of possession.[1]Placing a tax deed for the whole tract on record by one cotenant is no ouster of another cotenant who did not know of the adverse claim,[2]and this is true even though the claimant enters under such deed and exercises certain acts of ownership.[3]The purchase by one cotenant of jointly held property from a tax sale adjudicatee followed by the purchaser's exclusive possession of the property does not act to oust the other cotenants as the cotenant's purchase presumptively redeems the property for the benefit of all the co-owners.[4]However, if one enters under color of title, claiming the whole tract for the possessor, and if other necessary conditions of adverse ownership concur, the

possession will be adverse to the other cotenant.[5]Where all cotenants originally claimed under a particular instrument as color of title, such instrument may serve the same purpose for any one of them who may subsequently claim adversely as to the others.[6]

Observation:

A cotenant cannot base adverse possession on a deed acquired in bad faith.[7]

It is the prevailing view that the mere recording of a deed purporting to convey the full title to land owned in cotenancy to a cotenant in possession, either from a cotenant or a stranger, does not in itself constitute notice to the other cotenants of the possessor's adverse claim,[8]although the contrary result has been reached,[9]especially where the adverse claimant believed him- or herself to be the sole owner and consequently believed that he or she did not take and hold possession as a cotenant.[10]

While it appears that a judicial decree purporting to establish the rights of cotenants, such as a partition decree, under proper circumstances may constitute an ouster and color of title on which to base adverse possession,[11]this is not true where the adverse claimants hold under the decree in recognition of the right of the other cotenants.[12]

Footnotes

1 Wilkerson v. Thomas, 121 Cal. App. 2d 479, 263 P.2d 678 (2d Dist. 1953); Moore v. Cole, 200 Tenn. 43, 289 S.W.2d 695 (1956).

2 Miller v. Murphy, 119 Mont. 393, 175 P.2d 182 (1946).

3 Boatman v. Beard, 1967 OK 33, 426 P.2d 349 (Okla. 1967).

4 Boase v. Edmonson, 471 So. 2d 847 (La. Ct. App. 2d Cir. 1985).

5 Black v. Beagle, 59 Wyo. 268, 139 P.2d 439, 148 A.L.R. 243 (1943).
As to what constitutes color of title, generally, see §§ 111 to 133.

6 Russell v. Tennant, 63 W. Va. 623, 60 S.E. 609 (1908).

7 Apodaca v. Hernandez, 61 N.M. 449, 302 P.2d 177 (1956).

8 Wilkerson v. Thomas, 121 Cal. App. 2d 479, 263 P.2d 678 (2d Dist. 1953) (deed from stranger).

9 Arends v. Frerichs, 192 Iowa 285, 184 N.W. 650 (1921).

10 Johns v. Scobie, 12 Cal. 2d 618, 86 P.2d 820, 121 A.L.R. 1404 (1939).

11 Ruick v. Twarkins, 171 Conn. 149, 367 A.2d 1380 (1976) (void probate decree may furnish proof of the elements of ouster and claim of right against cotenants).

12 Christiansen v. Christiansen, 159 F.2d 366 (C.C.A. 5th Cir. 1947).

3 Am. Jur. 2d Adverse Possession § 200

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6. Cotenants

a. In General; as Between Cotenants

§ 200. Tacking of successive possessions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

Forms

Forms relating to tacking, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [Westlaw® Search Query]

Sufficient privity may exist between cotenants to permit the tacking of successive possessions.[1] The title acquired by one cotenant of real property under a deed in severalty from a cotenant who is holding adversely does not inure to the benefit of other cotenants, and the grantees may tack their possession to that of their grantor for the purpose of establishing a title by adverse possession as against other cotenants.[2]

Caution:

A grantee was not entitled to tack the period of such grantee's exclusive possession of the property and payment of taxes to similar exclusive possession and payment of taxes by the grantor to establish adverse possession against a cotenant under a statute providing that a cotenant who has been in exclusive possession of real property for an uninterrupted period of 20 years, and has paid all taxes assessed against such property while in possession, may bring an action to establish adverse possession as against all other cotenants.[3]

CUMULATIVE SUPPLEMENT

Cases:

Tenant-in-common of real property, which was left to him and another individual in equal parts upon his father's death, acquired title to such property by adverse possession, where he actually, openly and notoriously, exclusively and continuously possessed the property for 20 years so that inference of hostile possession arose, and made either usual cultivation or improvement consistent with property's character, location, condition, and potential uses. McKinney's RPAPL § 541. Midgley v. Phillips, 143 A.D.3d 788, 39 N.Y.S.3d 62 (2d Dep't 2016).

[END OF SUPPLEMENT]

Footnotes

1 Woodruff v. Roysden, 105 Tenn. 491, 58 S.W. 1066 (1900).
As to tacking of successive possessions, generally, see §§ 70 to 79.

2 May v. Chesapeake & O. Ry. Co., 184 Ky. 493, 212 S.W. 131 (1919); Bradford v. Armijo, 28 N.M. 288, 210 P. 1070 (1922).

3 Willson v. Hessong, 38 Or. App. 269, 589 P.2d 1194 (1979).

3 Am. Jur. 2d Adverse Possession § 201

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a. In General; as Between Cotenants

§ 201. Interruption of statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

The bringing of an action involving title by a cotenant in possession in the joint names of the cotenants is an acknowledgment of the right of the cotenant out of possession and interrupts the running of the statute.[1] A suit by a cotenant in possession against other contents to annul a previous partition and for a new partition also arrests the running of the statute, which is based on the continued existence of the cotenancy.[2] A judgment against a person in possession of land, declaring that the deed under which the possessor holds is void and that the possessor is a cotenant with the other parties to the suit, interrupts and destroys any adverse possession the possessor may have had against the cotenants and restores the seisin to all of them, and the subsequent silent possession of such person claiming under the same deed, unaccompanied by an act amounting to an ouster of cotenants, will not constitute such adverse possession against the other cotenants as will vest title by the statute of limitations.[3]

Footnotes

1 McLearn v. Wallace, 35 U.S. 625, 9 L. Ed. 559, 1836 WL 3729 (1836).
As to substantial interruption of an adverse possession before the lapse of the period required to constitute the statutory bar, see §§ 80 to 102.

2 Newman v. Newman, 451 S.W.2d 417 (Ky. 1970).
As to partition, generally, see Am. Jur. 2d, Partition §§ 1 et seq.

3 Stewart v. Stewart, 83 Wis. 364, 53 N.W. 686 (1892).

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3 Am. Jur. 2d Adverse Possession § 202

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a. In General; as Between Cotenants

§ 202. Interruption of statute—Purchase or acquisition of undivided interest by adverse occupant

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

Where an adverse claimant is in possession of certain specific tracts, but purchases additional undivided interests, such purchases can be considered as purchases of title to support possession which would be in effect a recognition of the common title.[1]Moreover, where an occupant of land under a tax title becomes entitled to an undivided part of the land by a conveyance of the original title to such part, a presumption arises that the occupant is a cotenant with other owners of the original title and that the occupant ceases to be an adverse holder; however, such presumption may be overcome by evidence that the original possession was continued with the intention to exclude the other owners from any right or interest in the land.[2]

In most cases, however, a purchase or offer to purchase a cotenant's interest does not interrupt the continuity of the occupant's adverse possession as regards the owners of other undivided interests.[3]Thus, an adverse claimant of real property does not by taking deeds of an undivided interest become a cotenant with other holders of undivided interests so as to affect the adverse character of the subsequent possession regardless of the claimant's intention to recognize the title from which the grantors derived their interest and of knowledge of the extent or nature of the claim asserted by them.[4]

Footnotes

1 Viduarri v. Bruni, 154 S.W.2d 498 (Tex. Civ. App. San Antonio 1941), aff'd in part, rev'd in part on other grounds, 140 Tex. 138, 166 S.W.2d 81 (1942).

2 Cook v. Clinton, 64 Mich. 309, 31 N.W. 317 (1887).

3 Meaders v. Moore, 134 Tex. 127, 132 S.W.2d 256, 125 A.L.R. 817 (Comm'n App. 1939).

4 Meaders v. Moore, 134 Tex. 127, 132 S.W.2d 256, 125 A.L.R. 817 (Comm'n App. 1939) (heirs at law).

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3 Am. Jur. 2d Adverse Possession § 203

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b. Under Conveyance by Cotenant to Stranger

§ 203. Generally; conveyance of undivided interest

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

The mere purchase of the undivided interest of one cotenant, and entry under such conveyance, does not amount to a disseisin of another cotenant that can ripen into a good title since the grantee can claim merely to succeed to the title of the granting cotenant.[1]

Thus, the grantees under a deed conveying only an undivided half interest cannot use the grantor's possession to establish title to more than the undivided half interest.[2]

A sheriff's deed of the interest of one cotenant, together with actual possession by the grantee, does not constitute an ouster of the cotenant whose interest is not sold, nor can it be made the foundation for a claim of title by adverse possession as against such cotenant since the purchaser at a sheriff's sale receives only the interest that the execution debtor has in the property.[3]

Footnotes

1 Cook v. Rochford, 60 So. 2d 531, 32 A.L.R.2d 1210 (Fla. 1952).

2 Mills v. Roy O. Martin Lumber Co., 129 So. 2d 78 (La. Ct. App. 3d Cir. 1961).

3 Fallon v. Davidson, 137 Colo. 48, 320 P.2d 976 (1958).

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3 Am. Jur. 2d Adverse Possession § 204

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b. Under Conveyance by Cotenant to Stranger

§ 204. Conveyance of entire interest

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

It is a widely accepted rule that a conveyance by one cotenant to a stranger to the title, by an instrument purporting to pass the entire title in severalty, and not merely such cotenant's individual interest, followed by an entry into actual, open, and exclusive possession by such stranger under claim of ownership in severalty, amounts to an ouster of the other cotenants, which, if continued with the necessary requisites for the statutory period, will ripen into good title by adverse possession.[1]

An ouster of the cotenants of the grantor will ordinarily be presumed when the grantor conveys the entire property to a stranger who takes possession under the deed claiming sole ownership.[2]In considering this question, the principle that one who enters on land is presumed to enter under the title that the deed purports on its face to convey, as respects both the extent of the land and the nature of the person's interest, is applied.[3]Therefore, in such case, a sale of the whole tract is in effect such assertion of a claim to the whole as to be incompatible with an admission that the other cotenant has any right whatever, and it follows

that acts of ownership on the part of such grantee must necessarily be adverse to any other part owner[4] even in the absence of actual notice to the other cotenant of the adverse character of the possession.[5]

In some jurisdictions, however, a cotenant's deed of the entire fee is not sufficient to oust the other cotenants.[6] Thus, a grantee of a cotenant, though the conveyance purports to be in severalty, takes the place of the grantor, and the entry under such conveyance is not, any more than if it were on its face restricted to the actual interest of the grantor, presumed to be adverse to the other cotenants.[7]

Observation:

The rule that a conveyance, by a cotenant in possession, of the entire interest to a stranger amounts to an ouster of the cotenants out of possession does not apply in the situation in which the interest granted is a remainder interest, subject to a life interest in the property on the part of the grantor.[8]

Footnotes

1 Braue v. Fleck, 23 N.J. 1, 127 A.2d 1 (1956) (abrogated on other grounds by, J & M Land Co. v. First Union Nat. Bank, 166 N.J. 493, 766 A.2d 1110 (2001)); Jones v. Tate, 68 N.M. 258, 360 P.2d 920 (1961); Scramlin v. Warner, 69 Wash. 2d 6, 416 P.2d 699 (1966).

2 Smith v. Lemp, 31 Del. Ch. 1, 63 A.2d 169 (1949).

3 Patterson v. Miller, 154 Ark. 124, 241 S.W. 875 (1922); Tate v. Tate, 15 S.W.2d 159 (Tex. Civ. App. Eastland 1929), writ granted, (Oct. 16, 1929) and rev'd on other grounds, 27 S.W.2d 137 (Tex. Comm'n App. 1930).

4 Jackson v. Cole, 146 Ark. 565, 226 S.W. 1064 (1921).

5 Jackson v. Cole, 146 Ark. 565, 226 S.W. 1064 (1921).

6 Fallon v. Davidson, 137 Colo. 48, 320 P.2d 976 (1958), declining to decide the question but citing; John L. Roper Lumber Co. v. Richmond Cedar Works, 165 N.C. 83, 80 S.E. 982 (1914).

7 Johnson v. McLamb, 247 N.C. 534, 101 S.E.2d 311 (1958).

8 Lindsey v. Lindsey, 249 Ga. 832, 294 S.E.2d 512 (1982).
As to life tenancies and remainders, see §§ 221 to 225.

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3 Am. Jur. 2d Adverse Possession § 205

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C. Effect of Particular Relationships Between Parties

6. Cotenants

b. Under Conveyance by Cotenant to Stranger

§ 205. Conveyance of entire interest—Quitclaim deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

There is substantial authority to the effect that a quitclaim deed executed by a cotenant, that purports to convey the entire property, is a sufficient basis on which to ground a title by adverse possession in the grantee.[1] Such quitclaim deed is generally held to constitute color of title.[2]

The view has been taken, however, that a quitclaim deed made by one cotenant to a stranger operates only as would a conveyance of the right, title, and interest of the grantor and therefore does not amount to an ouster of other cotenants which, when accompanied by the necessary possession, would start the running of the statute of limitations against the other cotenants.[3] Under this rule, the rights of cotenants other than those directly concerned remain unaffected by such transfers whether voluntarily made or effected through an involuntary relinquishment of rights.[4] The fact that a quitclaim deed by one of two cotenants requires

the grantee to assume all taxes against the property does not show an intention of the grantor to convey more than the grantor's interest in the property so as to establish the quitclaim deed as color of title against the interest of the other cotenant.[5]

Footnotes

1 Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).

2 § 111.

3 Cook v. Rochford, 60 So. 2d 531, 32 A.L.R.2d 1210 (Fla. 1952); Hurst v. J.M. Griffin & Sons, 209 Miss. 381, 46 So. 2d 440 (1950), error overruled, 209 Miss. 381, 47 So. 2d 811 (1950).

4 Curtis v. Barber, 131 Iowa 400, 108 N.W. 755 (1906).

5 Cook v. Rochford, 60 So. 2d 531, 32 A.L.R.2d 1210 (Fla. 1952).

3 Am. Jur. 2d Adverse Possession § 206

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6. Cotenants

b. Under Conveyance by Cotenant to Stranger

§ 206. Conveyance of entire interest—Deed on judicial or execution sale

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

A deed issued on a judicial or execution sale has the same effect as is attributed to an ordinary deed, that is, it amounts to an ouster of all cotenants which, when possession is taken under any such deed, starts the running of the statute of limitations.[1] So, where a person purchases land at an execution sale, and takes possession thinking that title has been acquired to the entire tract, although the title of all cotenants has not in fact passed, the purchaser acquires a title by adverse possession after the lapse of the statutory period.[2] Further, where property is sold under mortgage foreclosure, the right of cotenants of the mortgagor to assert an interest in the estate is barred after the statutory period where the sale purports to convey the entire property, and the purchaser enters with that understanding.[3]

Footnotes

1 Bradshaw v. Holmes, 246 S.W.2d 296 (Tex. Civ. App. Amarillo 1951), writ refused n.r.e.

2 Call v. Phelps' Adm'r, 20 Ky. L. Rptr. 507, 45 S.W. 1051 (Ky. 1898).

3 Dew v. Garner, 207 Ala. 353, 92 So. 647, 27 A.L.R. 5 (1922).

End of Document

3 Am. Jur. 2d Adverse Possession § 207

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6. Cotenants

b. Under Conveyance by Cotenant to Stranger

§ 207. Conveyance of entire interest—Executory contract or bond for title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

To constitute an ouster, it is not required that the writing by which one cotenant purports to convey an estate held jointly with others should at once vest legal title in the purchaser, provided possession is taken, and an entry under a bond for title is a sufficient ouster of the cotenants of the grantor to set in motion the statute of limitations against them although the purchaser does not acquire the legal title until long after entry.[1] It has also been held that a purchaser may acquire title by adverse possession as against cotenants under an executory agreement by one cotenant to convey the whole.[2]

Observation:

It has been held, on the other hand, that where one spouse executes a contract to convey property held jointly by both spouses, the possession of the purchaser under such a contract is not adverse to the spouse not executing the instrument.[3]

Footnotes

1 Rose v. Ware, 115 Ky. 420, 24 Ky. L. Rptr. 2321, 74 S.W. 188 (1903).

2 Patterson v. Miller, 154 Ark. 124, 241 S.W. 875 (1922); Clarke v. Dirks, 178 Iowa 335, 160 N.W. 31 (1916).

3 McNeeley v. South Penn Oil Co., 52 W. Va. 616, 44 S.E. 508 (1903).
As to effect of family relationship, see §§ 169 to 173.

End of Document

3 Am. Jur. 2d Adverse Possession § 208

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6. Cotenants

b. Under Conveyance by Cotenant to Stranger

§ 208. Conveyance of entire interest—Mortgage

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

A mortgage by a cotenant to a third person, not followed by possession thereunder, does not amount to an ouster of other cotenants so as to ripen into an adverse title as against such cotenants at the termination of the statutory period.[1] Thus, the giving by one cotenant of a mortgage deed to land not in the actual occupancy of either cotenant, though purporting to cover and convey the entire lot, does not of itself operate as an ouster of the other cotenant.[2] In order that the giving of such deed should have efficacy toward constituting an ouster, it should be accompanied and followed by a claim of ownership of which such other cotenant had knowledge and by acts of possession not only inconsistent with but also in exclusion of the other cotenant's rights.[3]

Footnotes

1 King v. Hill, 141 Tex. 294, 172 S.W.2d 298 (1943).

2 Scottish-American Mortg. Co. v. Bunckley, 88 Miss. 641, 41 So. 502 (1906).

3 Scottish-American Mortg. Co. v. Bunckley, 88 Miss. 641, 41 So. 502 (1906).

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3 Am. Jur. 2d Adverse Possession § 209

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6. Cotenants

b. Under Conveyance by Cotenant to Stranger

§ 209. Nature and extent of possession

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

To enable one claiming an entire tract of land under a conveyance from one cotenant to establish title thereto and oust other cotenants, it is essential for the possessor to intend to hold the property adversely and oust the cotenants of the grantor.[1] It is stated that the entry of the grantee under a conveyance that purports to convey the whole property evinces an intention on the part of the grantee to claim the whole property.[2] A grantee of a cotenant by a deed purporting to convey a full title who promptly records the deed, takes possession of the real estate, and thereafter seeks to quiet title as against the grantor's cotenants is presumed to hold all that the deed calls for and therefore to hold adversely to the other cotenants.[3] Possession under such adverse claim does not require actual residence on the land by the grantee, but possession by tenants or by others with permission of the grantee is sufficient.[4]

A grantee who recognizes an outstanding legal title vested in the cotenants of the grantor cannot acquire title to the whole tract by adverse possession.[5]This is true even though the deed purports to convey the entire property[6]and especially where the conveyance by one cotenant excepts and reserves the interests of the other cotenants, and this reservation is recognized by the grantee.[7]In a number of cases, however, it has been held that conduct of a grantee of a cotenant acknowledging the interests of the other cotenants was insufficient to prevent ripening in the grantee of title by adverse possession.[8]

CUMULATIVE SUPPLEMENT

Cases:

The first element of title by prescription is twenty or more years of exclusive and uninterrupted possession by a co-tenant without any accounting to the other co-tenants. Roberts v. Bailey, 470 S.W.3d 32 (Tenn. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Price v. Hall, 140 Ind. 314, 39 N.E. 941 (1895).

2 Rose v. Ware, 115 Ky. 420, 24 Ky. L. Rptr. 2321, 74 S.W. 188 (1903).

3 Farmers State Bank of Clay Center v. Lanning, 162 Kan. 95, 174 P.2d 69 (1946).

4 Whittington v. Cameron, 385 Ill. 99, 52 N.E.2d 134, 150 A.L.R. 551 (1943).
As to occupancy by agent or tenant as constituting possession by adverse claimant, see § 21.

5 Allen v. Allen, 292 Ill. 453, 127 N.E. 85, 27 A.L.R. 1 (1920).

6 Long v. Morrison, 251 Ill. 143, 95 N.E. 1075 (1911).

7 Grand Tower Mining, Mfg. & Transp. Co. v. Gill, 111 Ill. 541, 1884 WL 9986 (1884).

8 Weaver v. Blackmon, 212 Ala. 681, 103 So. 889 (1925); Harjo v. Mathis, 1935 OK 135, 170 Okla. 523, 41 P.2d 92 (1935).

3 Am. Jur. 2d Adverse Possession § 210

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6. Cotenants

b. Under Conveyance by Cotenant to Stranger

§ 210. Nature and extent of possession—Ouster of cotenants

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

While it is true that ouster of the other cotenants by the grantee of one of the cotenants must appear in order to support an adverse claim, this does not necessarily require actual physical ouster, and it is sufficient if the grantee claims exclusive ownership and, by conduct, denies the right of others to any interest in the property.[1] However, in order for an ouster of the cotenants of the grantor to occur, and title to become vested in the grantee by adverse possession, it is necessary for the grantee to enter into actual possession of the property[2] either personally or through another.[3] An ouster of the cotenants of a grantor will ordinarily be presumed where the grantor conveys the property to a stranger who takes possession under the deed claiming sole ownership.[4]

CUMULATIVE SUPPLEMENT

Cases:

Claimants, who were grantees under deed that purported to grant interest in entirety of property, entered property under color of title, and thus ousted cotenants, as required for claim of adverse possession in quiet title action; upon prior owner's death, her brother, daughter, and second husband were cotenants in property, daughter and brother purported to convey property in its entirety to claimants, who were third-parties to cotenancy, claimants recorded deed and averred that they believed they received entirety of property through deed, there was no indication brother or daughter knew second husband had interest, and deed was not void on its face and was made in good faith. Mont. Code Ann. § 70-19-407. Nelson v. Davis, 2018 MT 113, 417 P.3d 333 (Mont. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Davis v. Harnesberger, 211 Ga. 625, 87 S.E.2d 841 (1955); Reed v. Bales, 240 Miss. 592, 128 So. 2d 374 (1961).

2 Seawood v. Ozan Lumber Co., 221 Ark. 196, 252 S.W.2d 829 (1952).

3 §§ 20, 21.

4 Smith v. Lemp, 31 Del. Ch. 1, 63 A.2d 169 (1949).

3 Am. Jur. 2d Adverse Possession § 211

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§ 211. Notice to cotenants of hostile holding

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

Where a cotenant purports to convey the fee to an entire premises held jointly with others, and the grantee enters, endeavoring to establish title to the entire premises by adverse possession, it is essential that the cotenants of the grantor have notice of the adverse claim of the grantee.[1] Thus, evidence that a cotenant has not participated in a deed executed by other cotenants purporting to convey the entire title to the land, and has no notice of the adverse character of the holding under the deed, bars such grantee from acquiring title thereto by adverse possession.[2]

It is not essential, however, that the cotenants should receive actual notice if by reason of the facts and circumstances, they can be charged with notice that their interests are being jeopardized.[3] All the law seems to require is that the acts of dominion over the property be of such character as may be reasonably expected to inform the cotenants of the fact of possession and the

adverse claim of title.[4]Constructive notice is equally effective even though the cotenants are nonresidents of the state wherein the property is located.[5]

CUMULATIVE SUPPLEMENT

Cases:

Limited liability company (LLC) failed to establish its predecessor's hostile possession of certain property, in its action to quiet title on property based on adverse possession against its co-tenants, who were great-grandchildren of individual with purported one-half interest in property; LLC's predecessor had reason to suspect that cotenancy existed, as deed to predecessor contained first mention of one-third undivided interest, and, thus, to act in good faith in claiming adverse possession, predecessor must have provided co-tenants with actual notice, which LLC admitted it was unable to prove. HRS § 669–1(b). Ka%7fUpulehu Land LLC v. Heirs and Assigns of Pahukula, 136 Haw. 123, 358 P.3d 692 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Frank v. Johnson, 261 Ala. 642, 75 So. 2d 153 (1954); Wheeler v. Harris, 232 Ark. 469, 339 S.W.2d 99 (1960); Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958); Hines v. Pointer, 523 S.W.2d 733 (Tex. Civ. App. Fort Worth 1975), writ refused n.r.e., (Oct. 15, 1975).

2 West v. Evans, 29 Cal. 2d 414, 175 P.2d 219 (1946); Fordson Coal Co. v. Vanover, 291 Ky. 447, 164 S.W.2d 966 (1942).

3 Stull v. Board of Trustees of Dona Ana Bend Colony Community Grant, 61 N.M. 135, 296 P.2d 474 (1956); Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).

4 Stull v. Board of Trustees of Dona Ana Bend Colony Community Grant, 61 N.M. 135, 296 P.2d 474 (1956).

5 Talbott v. Woodford, 48 W. Va. 449, 37 S.E. 580 (1900).

3 Am. Jur. 2d Adverse Possession § 212

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§ 212. Notice to cotenants of hostile holding—Effect of recording or failing to record deed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Joint Tenancy 9, 13

A.L.R. Library

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214

Although there is authority to the contrary,[1] the view is widely taken that the recordation of a deed from a cotenant to a stranger, purporting to pass title to the entire property, is sufficient notice to the grantor's cotenants for purposes of establishing title in the grantee by adverse possession,[2] especially if it is followed by open possession by the grantee.[3] Unquestionably, where one holds under the deed of a cotenant conveying a designated specific portion of a tract held in common, the recorded deed and possession are notice to the other cotenants of the tract that the grantee is holding the designated portion adversely to them.[4]

The mere fact that the deed conveying the entire interest in the land under which a stranger claims as grantee of one of several cotenants was not placed on record does not prevent the statute of limitations from running if the grantee takes open and exclusive possession.[5]

Footnotes

1 West v. Evans, 29 Cal. 2d 414, 175 P.2d 219 (1946).

2 Sams v. Sampson, 255 S.W.2d 626 (Ky. 1953); Lummus v. Brackin, 59 N.M. 216, 281 P.2d 928 (1955).
As to effect of recording as notice, see Am. Jur. 2d, Records and Recording Laws §§ 71 to 76.

3 Parr v. Ratisseau, 236 S.W.2d 503 (Tex. Civ. App. San Antonio 1951), writ refused n.r.e.

4 Parr v. Ratisseau, 236 S.W.2d 503 (Tex. Civ. App. San Antonio 1951), writ refused n.r.e.

5 Eastman, Gardiner & Co. v. Hinton, 86 Miss. 604, 38 So. 779 (1905).

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3 Am. Jur. 2d Adverse Possession § 213

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7. Mortgagor and Mortgagee

§ 213. Possession by mortgagor and those claiming under mortgagor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Mortgages 213, 214

As a general rule, the possession of a mortgagor or an assignee of the mortgagor cannot be adverse to the rights and estate of the mortgagee[1] until the mortgagor has denied the mortgagee's rights under the mortgage and claimed an exclusive title[2] so openly and notoriously that the mortgagee must have known of the adverse claim.[3] So long as the relation of mortgagor and mortgagee is recognized between the parties by the receipt of payments on account of principal or interest, or in any other way, there can be no adverse possession by the mortgagor[4] or a grantee of the mortgagor.[5] A mere repudiation of the mortgagee's interest is not enough to start the statute running.[6]

Ordinarily, where either a mortgagor or a grantee or assignee of the mortgagor claims adversely to the mortgagee, at least where the adverse possession does not antedate the execution of the mortgage, the period of adverse possession does not, in the absence of open denial or disaffirmance of the mortgagee's interest, commence running against the mortgagee until the maturity of the mortgage or foreclosure since before that time, the mortgagee has no cause of action to eject the mortgagor or those claiming under the mortgagor, and their possession is permissive rather than adverse.[7]

Caution:

Even though there has been default in interest payments due under a mortgage, and there is a provision in the notes for acceleration of payment on such default "at the option of the holder," where there has been no exercise of this option, limitations do not begin until the maturity of the notes.[8]

Footnotes

1 Allemannia Fire Ins. Co. v. York, 16 Tenn. App. 167, 65 S.W.2d 838 (1932); Calvert v. Hanna, 140 S.W.2d 976 (Tex. Civ. App. Amarillo 1940).
As to adverse possession against a mortgagee, see § 157.
As to adverse possession against a purchaser at foreclosure sale, see § 214.
As to the right of a mortgagor to assert adverse title, see Am. Jur. 2d, Mortgages §§ 200 to 213.

2 Allemannia Fire Ins. Co. v. York, 16 Tenn. App. 167, 65 S.W.2d 838 (1932); Calvert v. Hanna, 140 S.W.2d 976 (Tex. Civ. App. Amarillo 1940).

3 Comstock v. Finn, 13 Cal. App. 2d 151, 56 P.2d 957 (4th Dist. 1936); Calvert v. Hanna, 140 S.W.2d 976 (Tex. Civ. App. Amarillo 1940).

4 Lewis v. Schwenn, 93 Mo. 26, 2 S.W. 391 (1886).

5 Zeller's Lessee v. Eckert, 45 U.S. 289, 4 How. 289, 11 L. Ed. 979, 1846 WL 5696 (1846).

6 Moerbe v. Beckmann, 132 S.W.2d 616 (Tex. Civ. App. Austin 1939), writ dismissed, judgment correct.

7 Norris v. Ile, 152 Ill. 190, 38 N.E. 762 (1894); Grether v. Clark, 75 Iowa 383, 39 N.W. 655 (1888).

8 Moerbe v. Beckmann, 132 S.W.2d 616 (Tex. Civ. App. Austin 1939), writ dismissed, judgment correct.

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3 Am. Jur. 2d Adverse Possession § 214

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C. Effect of Particular Relationships Between Parties

7. Mortgagor and Mortgagee

§ 214. Possession by mortgagor and those claiming under mortgagor—After foreclosure

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Mortgages 213, 214

A.L.R. Library

Possession of mortgagor or successor in interest as adverse to purchaser at foreclosure sale, 38 A.L.R.2d 348

The mere sale of property on the foreclosure of a mortgage does not in itself so affect the possession of the mortgagor or a successor in interest as to render it adverse to the purchaser or a grantee from the purchaser.[1] As a general rule, possession by a mortgagor after a foreclosure sale is presumed to be in subordination to the title of the purchaser, and the statute of limitations does not run in favor of the mortgagor.[2] Any claim of adverse possession by the mortgagor or a successor in interest against the purchaser at a foreclosure sale, or the latter's grantee or assignee, is without effect where such possession is found to have been amicable.[3]

On the other hand, an adverse possession by a mortgagor and successors in interest as against purchasers at the foreclosure sale may be commenced by open and hostile acts constituting an assertion of title even though the foreclosure proceedings have not been concluded by confirmation of the sale and execution of the sheriff's deed.[4] The possession of a mortgagor or a successor in interest is adverse to the foreclosure sale purchaser, or the latter's successor in interest, if such possession is recognized as

hostile.[5]Where a mortgagor remains in the open, notorious, and exclusive possession of the property for the statutory period after foreclosure, the mortgagor's title is not presumed to be subordinate to and in recognition of the rights of the purchaser at the foreclosure sale.[6]

Observation:

Where a mortgagor remains in possession of only a portion of the premises for the statutory period after foreclosure and the purchaser maintains possession of the balance of the premises, the view is taken that the presumption of subserviency of the mortgagor's title to that of the purchaser applies to such partial possession by the mortgagor.[7]In such situation, the mortgagor does not have the exclusive possession of the premises necessary to acquire title by adverse possession.[8]

Footnotes

1 Justice v. Graham, 246 S.W.2d 135 (Ky. 1952); Caruso v. Hunt, 69 N.J. Super. 447, 174 A.2d 381 (Ch. Div. 1961).

2 Eason v. Samson Lodge No. 624, A.F. & A.M., 270 Ala. 194, 117 So. 2d 138 (1959).

3 Bradshaw v. Darby, 201 Ark. 670, 146 S.W.2d 547 (1941); Justice v. Graham, 246 S.W.2d 135 (Ky. 1952).

4 Brewster v. Herron, 1952 OK 440, 267 P.2d 143, 38 A.L.R.2d 335 (Okla. 1952).

5 Brewster v. Herron, 1952 OK 440, 267 P.2d 143, 38 A.L.R.2d 335 (Okla. 1952).

6 Eason v. Samson Lodge No. 624, A.F. & A.M., 270 Ala. 194, 117 So. 2d 138 (1959).

7 Eason v. Samson Lodge No. 624, A.F. & A.M., 270 Ala. 194, 117 So. 2d 138 (1959).

8 Eason v. Samson Lodge No. 624, A.F. & A.M., 270 Ala. 194, 117 So. 2d 138 (1959).
As to exclusiveness of possession, generally, see §§ 61 to 66.

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3 Am. Jur. 2d Adverse Possession § 215

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7. Mortgagor and Mortgagee

§ 215. Possession by mortgagee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Mortgages 213, 214

A.L.R. Library

Adverse possession: Mortgagee's possession before foreclosure as barring right of redemption, 7 A.L.R.2d 1131

As a general rule, the possession of the mortgagee is not considered hostile to the interests of the mortgagor during the continuance of the relationship of mortgagor and mortgagee.[1] A mortgagee who enters the mortgaged property with permission, either express or implied, of the mortgagor occupies the premises in the character of quasi trustee for the mortgagor and cannot hold adversely until the mortgagee distinctively disavows and repudiates the mortgage relationship and until notice thereof is brought home to the mortgagor.[2] The taking of possession of mortgaged property by the mortgagee will not be regarded as adverse to the mortgagor where the mortgagee states that the property was unoccupied, and possession was taken in order to protect the mortgagee's investment.[3] Generally, the possession of the mortgaged premises by the mortgagee, under an agreement to apply the rents and profits to the satisfaction of the mortgage debt, does not become adverse to the mortgagor until the debt is fully discharged from that source, or there has been an express repudiation of the mortgage relationship.[4] The subsequent holding may be regarded as adverse, however, where the possession is held over after the debt has been satisfied.[5]

Despite the rule that the mortgage relation is inconsistent with an adverse claim to the property by the mortgagee, where the mortgagee has expressly repudiated the rights of the mortgagor, and the repudiation is brought home to the mortgagor, subsequent possession by the mortgagee will be regarded as adverse.[6]An original entry by a mortgagee that was under a claim inconsistent with the rights of the mortgagor is a sufficient indication to the mortgagor that the possession was not in recognition of the right of redemption so that, if continued for the requisite period, any right that the mortgagor had in the property would be barred.[7]Furthermore, even where the mortgagee's entry into possession was permissive or otherwise in recognition of the rights of the mortgagor, if the relationship subsequently is repudiated, and the acts in denial of the mortgagor's rights are brought to the notice of the mortgagor, the possession of the mortgagee thereafter will be regarded as adverse.[8]Where a mortgagee in possession has repudiated the mortgage relationship, and indicated an intent to hold adversely, the mere payment of taxes by the mortgagor will not stop the running of the statute in the mortgagee's favor.[9]

Under the rule that the mortgagee is entitled to possession of the mortgaged premises on default by the mortgagor, even without bringing proceedings for foreclosure,[10]possession by the mortgagee may be hostile to the mortgagor in the sense that it is against the mortgagor's will. However, as a right conferred by the mortgage relationship, it cannot be said to be in denial of the mortgage so as to be hostile in the sense of a repudiation of that relationship.[11]Nevertheless, such rightful possession, if continued for the statutory period without any acknowledgment of the right of redemption, may serve to bar any right in the mortgagor even without acts of positive repudiation of the mortgage.[12]Among the various acts that amount to an acknowledgment of the mortgagor's rights, so that rightful possession of the mortgagee would not bar the equity of redemption, one of the most frequently mentioned is the act of accounting for rents or profits.[13]The courts have also said that the receipt of interest or payments on the mortgage debt acts as an acknowledgment effective to bar the running of limitations against the mortgagor's rights.[14]In some instances, an acknowledgment of the mortgage relationship by the mortgagee even after possession has been had for the statutory period characterizes all previous possession as under the mortgage and to revive the otherwise barred right of redemption.[15]While the acts of the mortgagee are generally determinative of the question whether the mortgagee's possession will bar the rights of the mortgagor, in some instances, the courts have indicated that the mortgagor's concurrence in the independent possession of the mortgagee may also be of some importance in characterizing the possession as friendly or adverse.[16]

Where the grantee under a deed absolute in form, but intended as a mortgage, enters into possession of the land conveyed, and holds it under circumstances which show possession that is adverse to the grantor, the statute of limitations, in the absence of any agreement as to when the indebtedness secured by the deed is to be paid, begins to run immediately from the date of the delivery of the deed.[17]

Footnotes

1 Heidelberg v. Duckworth, 206 Miss. 388, 40 So. 2d 179 (1949); Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753, 7 A.L.R.2d 1124 (1949).

2 Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753, 7 A.L.R.2d 1124 (1949).

3 Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753, 7 A.L.R.2d 1124 (1949).

4 Tiger v. Sellers, 145 F.2d 920 (C.C.A. 10th Cir. 1944).

5 Blanch v. Collison, 174 Md. 427, 199 A. 466 (1938).

6 Knight v. Hilton, 224 S.C. 452, 79 S.E.2d 871 (1954).

7 Winburn v. Witt, 134 Ky. 339, 120 S.W. 293 (1909).

8 Mahaffy v. Faris, 144 Iowa 220, 122 N.W. 934 (1909); Becker v. McCrea, 193 N.Y. 423, 86 N.E. 463 (1908).

9 Borden v. Clow, 21 Nev. 275, 30 P. 821 (1892).

10 Am. Jur. 2d, Mortgages § 142.

11 Munro v. Barton, 98 Me. 250, 56 A. 844 (1903).

12 Charles B. Teasley, Inc., v. Dreyfus, 252 Ala. 41, 39 So. 2d 377 (1949).

13 Dixon v. Hayes, 171 Ala. 498, 55 So. 164 (1911) (overruled in part on other grounds by, Earnest v. Fite, 211 Ala. 363, 100 So. 637 (1924)); Sandling v. Kearney, 154 N.C. 596, 70 S.E. 942 (1911).

14 Woods v. Sanders, 247 Ala. 492, 25 So. 2d 141 (1946).

15 Stebbins v. Clendenin, 136 Ark. 391, 206 S.W. 681 (1918).

16 Reynolds v. White, 94 Ky. 156, 14 Ky. L. Rptr. 825, 21 S.W. 754 (1893).

17 Borden v. Clow, 21 Nev. 275, 30 P. 821 (1892).

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3 Am. Jur. 2d Adverse Possession § 216

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C. Effect of Particular Relationships Between Parties

7. Mortgagor and Mortgagee

§ 216. Possession by mortgagee—After foreclosure

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Mortgages 213, 214

Within the meaning of a statute that gives the right of redemption unless the mortgagee has maintained an adverse possession for 20 years, a mortgagee who, with the mortgagor's consent, takes possession of the property after a judgment of foreclosure, without sale, does not hold adversely.[1] The fact that the grantee of the purchaser at an invalid foreclosure sale may, in equity, be deemed to be a mortgagee in possession does not make the grantee such in fact so that such possession is not adverse to the mortgagor.[2] However, a mortgagee who takes possession under invalid foreclosure proceedings after a default in payment may acquire title by adverse possession for the statutory period.[3]

Footnotes

1 Becker v. McCrea, 193 N.Y. 423, 86 N.E. 463 (1908).

2 Brynjolfson v. Dagner, 15 N.D. 332, 109 N.W. 320 (1906).

3 Satterfield v. Peterson, 173 Neb. 618, 114 N.W.2d 376 (1962).

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3 Am. Jur. 2d Adverse Possession § 217

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C. Effect of Particular Relationships Between Parties

8. Trustee and Beneficiary

§ 217. Possession by trustee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Trusts 138

A.L.R. Library

What constitutes sufficient repudiation of express trust by trustee to cause statute of limitations to run, 54 A.L.R.2d 13

As a general rule, the possession of a trustee under an express trust is not adverse to that of the beneficiary.[1] As long as the relation of trustee and beneficiary exists, the trustee, as fiduciary, may not assert an interest or title antagonistic to the beneficiary.[2] Until the trust is openly repudiated, the beneficiary may rely on the integrity and faithfulness of the trustee without forfeiting rights.[3] Indeed, the trustee's possession of trust property is the possession of the beneficiary whether the trust is express or implied.[4] That is, a trustee cannot set up a title adverse to the beneficiary so long as the trust is acknowledged.[5]

Likewise, a constructive trustee of real property may not claim property by adverse possession without clearly making the claim of ownership known to the beneficiary.[6]

Footnotes

1 Giovani v. Rescorla, 69 Ariz. 20, 207 P.2d 1124 (1949); Boehnke v. Roenfanz, 246 Iowa 240, 67 N.W.2d 585, 54 A.L.R.2d 1 (1954).

2 Garcia v. Sanchez, 64 N.M. 114, 325 P.2d 289 (1958).
As to the running of the statute of limitations against trusts, generally, see Am. Jur. 2d, Trusts §§ 655, 657, 658.

3 Homer v. Wullenweber, 89 Ohio App. 255, 45 Ohio Op. 481, 101 N.E.2d 229 (1st Dist. Hamilton County 1951).

4 Homer v. Wullenweber, 89 Ohio App. 255, 45 Ohio Op. 481, 101 N.E.2d 229 (1st Dist. Hamilton County 1951).

5 Homer v. Wullenweber, 89 Ohio App. 255, 45 Ohio Op. 481, 101 N.E.2d 229 (1st Dist. Hamilton County 1951).

6 Waxler v. Dalsted, 529 N.W.2d 176 (N.D. 1995).

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8. Trustee and Beneficiary

§ 218. Possession by trustee—When possession becomes hostile

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Trusts 138

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What constitutes sufficient repudiation of express trust by trustee to cause statute of limitations to run, 54 A.L.R.2d 13

Generally, when a trustee repudiates the trust, and openly and notoriously claims an exclusive title, the trustee's possession becomes hostile to the beneficiary[1] from the time of a known disavowal of the trust.[2] For prescriptive title to ripen in favor of a trustee, the trustee must deny the trust, and the trustee's possession must become adverse, tortious, and wrongful, and must be open, continued, and notorious, so as to preclude all doubt as to the character of the holding of the property or the want of knowledge on the part of the cestui que trust.[3] There must be a positive and continued disclaimer of title, and an assertion of adverse right brought home to the beneficiary, before the statute of limitations will operate.[4] The mere failure of a trustee to account, without more, is not such an entire repudiation of the trust to start the statute running.[5] The payment of taxes by or through the trustee, or taking title in the name of the trustee, does not meet the requirement that the holding must be open, hostile, and adverse to the right of the beneficiary to start the statute running.[6] On the other hand, where land was conveyed to church trustees in trust for use of the minister, and subsequently, the church became incorporated and leased the land and used the rents for general church purposes, assuming the trust continued after the church became incorporated and that title became

vested in it as trustee, the leasing of the land and the use of the rentals for purposes at variance with those named in the trust instrument was tantamount to a repudiation of the trust and constituted a basis for an adverse possession ripening into title after lapse of the statutory period.[7] A statement by a husband to his wife that she had no interest in his property, in which she claimed a resulting trust on the ground of having contributed to the purchase price, constituted a repudiation of any trust.[8]

Where a trustee has repudiated obligations as a trustee, which need not be in specific words but may consist of conduct inconsistent with the existence of the trust, and holds adversely, a beneficiary with knowledge of the repudiation can no longer rely on the trustee's continued performance of duty, and the beneficiary is then in the position similar to that of any other party who has an equitable claim against an adversary and may become barred by laches by failure to pursue a remedy with reasonable diligence.[9] If a trustee does an act that purports to be a termination of the trust, it gives currency to the statute from the time of such act; or in other words, the trustee thenceforth holds adversely.[10]

Footnotes

1 Satariano v. Galletto, 66 Cal. App. 2d 813, 153 P.2d 201 (1st Dist. 1944).
As to accrual of cause of action against trustee on behalf of beneficiary, see Am. Jur. 2d, Trusts § 658.

2 Boehnke v. Roenfanz, 246 Iowa 240, 67 N.W.2d 585, 54 A.L.R.2d 1 (1954); Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).
As to effect of disability, see §§ 160 to 163.

3 Reasor v. Peoples Financial Services, Inc., 276 Ga. 534, 579 S.E.2d 742 (2003).

4 Dewey v. Dewey, 163 Neb. 296, 79 N.W.2d 578 (1956); Homer v. Wullenweber, 89 Ohio App. 255, 45 Ohio Op. 481, 101 N.E.2d 229 (1st Dist. Hamilton County 1951).

5 Combs v. Haddock, 190 Cal. App. 2d 151, 11 Cal. Rptr. 865 (2d Dist. 1961).

6 Whatley v. Wood, 148 Colo. 349, 366 P.2d 570 (1961).

7 Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).

8 Cassas v. Cassas, 73 Wyo. 147, 276 P.2d 456, 69 A.L.R.2d 187 (1954).

9 Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).

10 Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).

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8. Trustee and Beneficiary

§ 219. Possession by beneficiary

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Trusts 139.1

As between trustee and beneficiary, the possession of the beneficiary is the possession of the trustee and cannot ordinarily be adverse.[1] If the holder of a legal title, subject to a resulting trust, permits the beneficiary to occupy and enjoy the land as owner, the beneficiary can derive no advantage from lapse of time.[2]

Footnotes

1 Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).

2 Miller v. Baker, 166 Pa. 414, 31 A. 121 (1895).

3 Am. Jur. 2d Adverse Possession § 220

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8. Trustee and Beneficiary

§ 220. Possession by third person under conveyance or execution sale

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A possession must be regarded as adverse to both the trustee and the beneficiary where the trustee sells the trust estate to a purchaser for value, with warranty, without any intimation in the conveyance of the existence of the subsisting trust, and the purchaser enters and occupies the estate and does no act that in any manner recognizes the existence of the trust provided, of course, that there is no fraud or concealment.[1] Furthermore, the possession of property by a purchaser under an invalid conveyance by the trustee, without objection on the part of the trustee, and claimed openly and exclusively for a sufficient period of time to give title by adverse possession, cannot be attacked by either the trustee or the beneficiary.[2] A trustee is not estopped from bringing an action to recover the property because of the fact that the trustee was a party to the conveyance, and therefore, since a right of action remains in the trustee, both the trustee and the beneficiary are barred by failure of the trustee to act within the proper time.[3]

A purchaser in possession under a conveyance by the beneficiary acquires, after adverse possession for the requisite period of time, a good title as against both the trustee and the beneficiary.[4]

Footnotes

1 Merriam v. Hassam, 96 Mass. 516, 14 Allen 516, 1867 WL 5522 (1867).
As to adverse possession against trustees and beneficiaries, generally, see § 156.

2 Waterman Hall v. Waterman, 220 Ill. 569, 77 N.E. 142 (1906).

3 Meeks v. Olpherts, 100 U.S. 564, 25 L. Ed. 735, 1879 WL 16553 (1879).

4 Thompson v. Carmichael, 122 Pa. 478, 15 A. 867 (1888).

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3 Am. Jur. 2d Adverse Possession § 221

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C. Effect of Particular Relationships Between Parties

9. Life Tenant, Remainderman, and Reversioner

§ 221. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Life Estates 8

A.L.R. Library

What acts, claims, circumstances, instruments, color of title, judgment, or thing of record will ground adverse possession in a life tenant as against remaindermen or reversioners, 58 A.L.R.2d 299

It is a general rule that a life tenant cannot possess adversely to a remainderman[1] although the contrary result has been reached under certain circumstances.[2] Since the life tenant is entitled to possession and the remainderman or reversioner is not, no adverse possession by the former against the latter is possible until the latter's interest becomes a present interest, and it is immaterial that the life tenant claims a larger interest under color of title or informs the remainderman or reversioner that the life tenant claims an estate in fee simple or does both.[3] The statute of limitations never runs against a remainderman or reversioner during the existence of the life estate for the reason that no cause or compelling right of action is in the remainderman or reversioner during the life estate.[4]

At common law, an adverse possessor who occupies property for the statutory period acquires title against the life tenant but not as against the remainderman because during the life tenancy, the remainderman has no right to eject the adverse possessor.[5]

Observation:

That prior to the termination of the life estate, the remainderman or reversioner can sue under the local law to quiet title, remove clouds, or determine adverse claims is not ordinarily significant on the question whether the life tenant's possession is adverse. While in some jurisdictions since the remainderman can bring an action to have title quieted as against an adverse possessor before the remainder interest becomes possessory, the period of adverse possession begins to run as soon as the right to have the title quieted arises, the view in most jurisdictions is that the right of action to have the title quieted does not start the statute running; one reason for this latter view is that if the remainderman is compelled to bring a quiet title action before the remainder interest becomes possessory, on penalty of losing title to the adverse possessor, it means that the possessory action, such as ejectment or trespass, may never be available.[6]

Caution:

Once the statutory period for adverse possession is activated, the subsequent creation of a life estate and remainder neither negates nor suspends the running of the period.[7]

The presumption is that the possession of a life tenant, or one holding under or through the life tenant, is lawful and not adverse to remaindermen.[8]The rule has been applied with respect to life tenants in right of dower[9]and in right of curtesy.[10]

The rule that a life tenant under an instrument cannot hold adversely to persons named remaindermen in that instrument does not apply where the remaindermen claim the entire fee and immediate right of possession under an entirely different and conflicting instrument in which they are not remaindermen and to which the life tenant is a complete stranger.[11]The fact that claimants are vested with a life estate in property conveyed under a different chain of title does not prevent them from acquiring title by prescription to neighboring property.[12]The period of adverse possession by remaindermen can begin running against the interests of third parties prior to the date the outstanding life estate on property is removed, and a life tenant's possession may be hostile as to third parties and can be tacked on to the remainderman's interest.[13]

An intermediate remainder will not be affected by the acquisition, by the ultimate remainderman, of the life estate under an adverse possession claimed against the life tenant, and this is especially true where it is admitted that the intermediate remainder is unaffected.[14]

A contingent remainder interest held by a joint tenant, in a joint tenancy with full rights of survivorship, was not destroyed by adverse possession when the other joint tenant ejected him from the property and began exercising exclusive control and possession of the property, though over 15 years expired after the ejection before the other joint tenant brought a quiet title action and asserted an adverse possession claim, as the joint tenant's status as a remainderman could not accrue, if at all and at

a minimum, until the other joint tenant's death; the 15 year statutory period for adverse possession could not begin to run until the joint tenant's contingent remainder vested; and the other joint tenant could not adversely possess the contingent remainder interest.[15]

Footnotes

1 Eldridge v. Loftis, 723 So. 2d 562 (Ala. 1998); Wengel v. Wengel, 270 Mich. App. 86, 714 N.W.2d 371 (2006).

2 § 222.

3 Haynes v. Strange, 232 Ark. 374, 337 S.W.2d 661 (1960); Kiely v. Graves, 173 Wash. 2d 926, 271 P.3d 226 (2012).

4 Cotney v. Eason, 269 Ala. 354, 113 So. 2d 512 (1959); Brown v. Seal, 179 S.W.3d 481 (Tenn. Ct. App. 2005); State v. Beeson, 232 S.W.3d 265 (Tex. App. Eastland 2007).

5 Harkleroad v. Linkous, 281 Va. 12, 704 S.E.2d 381 (2011).

6 McDonald v. Burke, 288 S.W.2d 363 (Ky. 1955).

7 Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992).

8 Criswell v. Criswell, 101 Neb. 349, 163 N.W. 302 (1917).

9 § 230.

10 Dice v. Reese, 342 Pa. 379, 21 A.2d 89 (1941).

11 West v. Moore, 193 Tenn. 431, 246 S.W.2d 74 (1952).

12 Young v. Faulkner, 217 Ga. App. 321, 457 S.E.2d 584 (1995).

13 Robertson v. Dombroski, 678 So. 2d 637 (Miss. 1996).

14 McCreary v. Coggeshall, 74 S.C. 42, 53 S.E. 978 (1906).

15 Wengel v. Wengel, 270 Mich. App. 86, 714 N.W.2d 371 (2006).

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3 Am. Jur. 2d Adverse Possession § 222

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9. Life Tenant, Remainderman, and Reversioner

§ 222. When possession by life tenant becomes hostile

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Life Estates 8

A.L.R. Library

What acts, claims, circumstances, instruments, color of title, judgment, or thing of record will ground adverse possession in a life tenant as against remaindermen or reversioners, 58 A.L.R.2d 299

It is widely held that a life tenant, under certain circumstances, can hold the premises adversely to the remainderman or reversioner.[1] Thus, the holding over of a tenant for the life of another may become adverse to remainderman of the person for whose lifetime the estate was granted.[2] While there is strong support for the position that a life tenant cannot by acts and words alone establish an adverse holding,[3] there is considerable authority to the effect that, by renouncing the life estate and declaring ownership of the premises in fee, and bringing notice of those facts home to the remainderman or reversioner, a life tenant may establish an adverse possession.[4]

Observation:

To enable a life tenant to establish a possession adverse to the remainderman or reversioner, it is generally held that the life estate must first be extinguished as by a renunciation, repudiation, disavowal, disclaimer, or abandonment of that estate and all right of possession referable to it.[5]

It has also been said that to establish an adverse possession in a life tenant, an unequivocal ouster of the remainderman must be shown,[6]and the life tenant's conduct must demonstrate a clear purpose to infringe the remainderman's rights.[7]Moreover, to constitute adverse possession, notice to the remainderman or reversioner of the hostile holding by the life tenant is essential.[8]Adverse possession may be acquired by the life tenant where the knowledge is clearly brought home to the remainderman that the former claims the entire estate in the claimant's own right hostile to any claim or interest in the land by the remainderman or others claiming under the remainderman.[9]Express notice is not generally required, with anything unmistakably amounting to notice being sufficient.[10]However, some cases seem to take the view that actual knowledge by the remainderman or reversioner of the life tenant's hostile claim of title is essential.[11]

Caution:

Mere knowledge by a remainderman of the obvious fact of possession by the life tenant does not amount to proof of knowledge that the life tenant was claiming adversely.[12]

The life tenant's making of substantial improvements to the knowledge of the remainderman or reversioner may be sufficient to apprise the latter of a hostile claim of title,[13]but in most circumstances, the making of improvements by a life tenant is of little or no weight on the question whether possession became legally adverse to the remainderman or reversioner.[14]The acts of a life tenant in executing deeds or mortgages of the premises, purportedly in fee, or oil and gas leases or mineral deeds thereof, or devising the same generally, are ordinarily without effect to establish possession as adverse to the remainderman or reversioner.[15]The selling of timber from the premises by a life tenant is not sufficient to establish an adverse holding.[16]

Footnotes

1 Cessna v. Carroll, 178 Kan. 650, 290 P.2d 803, 58 A.L.R.2d 291 (1955); White v. Inman, 212 Miss. 237, 54 So. 2d 375, 30 A.L.R.2d 380 (1951).

2 Cessna v. Carroll, 178 Kan. 650, 290 P.2d 803, 58 A.L.R.2d 291 (1955).

3 Crawford v. Meis, 123 Iowa 610, 99 N.W. 186 (1904) (overruled in part on other grounds by, Koch v. Kiron State Bank of Kiron, 230 Iowa 206, 297 N.W. 450, 140 A.L.R. 273 (1941)).

4 Howth v. Farrar, 94 F.2d 654 (C.C.A. 5th Cir. 1938).

5 Pooler v. Hyne, 213 F. 154 (C.C.A. 7th Cir. 1914); Jefferson v. Bangs, 197 N.Y. 35, 90 N.E. 109 (1909).

6 White v. Inman, 212 Miss. 237, 54 So. 2d 375, 30 A.L.R.2d 380 (1951).

7 Copenhaver v. Copenhaver, 1957 OK 215, 317 P.2d 756 (Okla. 1957).

8 Howth v. Farrar, 94 F.2d 654 (C.C.A. 5th Cir. 1938); Murphy v. Boling, 273 Ky. 827, 117 S.W.2d 962, 117 A.L.R. 1373 (1938).

9 Myers v. Grant, 212 Ga. 677, 95 S.E.2d 9 (1956); Cessna v. Carroll, 178 Kan. 650, 290 P.2d 803, 58 A.L.R.2d 291 (1955).

10 Howth v. Farrar, 94 F.2d 654 (C.C.A. 5th Cir. 1938); Mills v. Pennington, 213 Ark. 43, 209 S.W.2d 281 (1948).

11 Maurer v. Reifschneider, 89 Neb. 673, 132 N.W. 197 (1911); Jefferson v. Bangs, 197 N.Y. 35, 90 N.E. 109 (1909).

12 Dunlavy v. Lowrie, 372 Ill. 622, 25 N.E.2d 67 (1939).

13 Howth v. Farrar, 94 F.2d 654 (C.C.A. 5th Cir. 1938).

14 Content v. Dalton, 122 N.J. Eq. 425, 194 A. 286, 112 A.L.R. 1031 (Ct. Err. & App. 1937).

15 Content v. Dalton, 122 N.J. Eq. 425, 194 A. 286, 112 A.L.R. 1031 (Ct. Err. & App. 1937).

16 Lake v. Ford, 244 Ky. 803, 52 S.W.2d 724 (1932).

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3 Am. Jur. 2d Adverse Possession § 223

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§ 223. When possession by life tenant becomes hostile—Under color of title

Topic Summary | Correlation Table | References

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West's Key Number Digest, Life Estates 8

A.L.R. Library

What acts, claims, circumstances, instruments, color of title, judgment, or thing of record will ground adverse possession in a life tenant as against remaindermen or reversioners, 58 A.L.R.2d 299

Where a life tenant acquires an independent title, or an instrument amounting to color of title, subsequent possession under such title or instrument may be adverse to the remainderman.[1] If a judgment, order, or decree purporting to vest title in the life tenant is not wholly void, though in part void or ineffective, the possession taken or maintained under such judgment, order, or decree by the life tenant is ordinarily adverse to the remainderman or reversioner.[2] Ordinarily, where a life tenant purchases the property at a void administrator's, executor's, or commissioner's sale, possession thereunder will be adverse to the remainderman or reversioner.[3]

A life tenant's possession following expiration of the time for redemption from a proceeding in attempted and supposedly valid foreclosure of a mortgage held by the life tenant on the premises would seem in most cases to be, in intent at least, patently adverse to the remainderman or reversioner.[4]

On the other hand, a life tenant's acquisition of a purported conveyance of the fee from a stranger does not in itself render possession adverse to the remainderman or reversioner.[5]Nor does a life tenant's acquisition of a tax title to the property, or assertion of a claim of ownership in fee founded on a tax title acquired by another, ground an adverse possession in the life tenant.[6]The same is true of a wholly void judgment, order, or decree purporting to vest the fee in the life tenant.[7]An intestate decedent's wife, who inherited a life estate in the decedent's property as dower, could not convert the life estate to a fee interest by a straw man transaction conveying her interest to her attorney, who then deeded the purported fee interest to the wife, although the wife asserted a claim of adverse possession of the fee, where the wife created an affidavit of descent, by which she purported to own the fee interest by adverse possession, and her actions while in possession, including farming land, leasing tobacco, raising livestock, and paying property taxes, were not inconsistent with the duties of a life tenant.[8]

Observation:

A life tenant's purchase of the premises at a sale in foreclosure of a mortgage or deed of trust thereon will generally be deemed to have been made for the benefit of remaindermen or reversioners contributing their portion of the purchase money, and therefore, such purchase does not readily supply a basis for adverse possession by the life tenant.[9]

Footnotes

1 Calvary Baptist Church of Baker v. Saxton, 117 Or. 125, 242 P. 616 (1925).

2 Cessna v. Carroll, 178 Kan. 650, 290 P.2d 803, 58 A.L.R.2d 291 (1955).

3 Balkham v. Woodstock Iron Co., 43 F. 648 (C.C.N.D. Ala. 1890), aff'd, 154 U.S. 177, 14 S. Ct. 1010, 38 L. Ed. 953 (1894); Woodstock Iron Co. v. Fullenwider, 87 Ala. 584, 6 So. 197 (1889).

4 Mitchell v. Vest, 157 Iowa 336, 136 N.W. 1054 (1912).

5 Hinton v. Farmer, 148 Ala. 211, 42 So. 563 (1906).

6 Perszyk v. Milwaukee Elec. Railway & Light Co., 215 Wis. 233, 254 N.W. 753, 93 A.L.R. 395 (1934).

7 Cessna v. Carroll, 178 Kan. 650, 290 P.2d 803, 58 A.L.R.2d 291 (1955).

8 Gee v. Brown, 144 S.W.3d 844 (Ky. Ct. App. 2004).

9 Edwards v. Puckett, 196 Tenn. 560, 268 S.W.2d 582 (1954).

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3 Am. Jur. 2d Adverse Possession § 224

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C. Effect of Particular Relationships Between Parties

9. Life Tenant, Remainderman, and Reversioner

§ 224. Grantee of life tenant

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Life Estates 8

A.L.R. Library

What acts, claims, circumstances, instruments, color of title, judgment, or thing of record will ground adverse possession in a life tenant as against remaindermen or reversioners, 58 A.L.R.2d 299

It is the general rule that prior to the death of a tenant for life, a grantee of the life tenant cannot hold adversely to the remainderman or reversioner since the latter do not have a right of entry and possession during the existence of the life estate.[1]Ordinarily, the task of establishing that the possession of a life tenant's grantee was adverse to the remainderman or reversioner is not aided by the fact that the grantee anticipated getting the fee or by the fact that the grantee was without knowledge or notice that the grantor was a mere life tenant and was unaware of the claim of the remainderman or reversioner.[2]Generally, that a conveyance by a life tenant purports to convey the fee does not affect the question as to whether possession by the life tenant's grantee may be adverse to the remainderman during the period of the life estate.[3]For the life tenant to make a deed purporting to convey the fee is no such repudiation or forfeiture of a life estate as would start the running of the statute of limitations against the remainderman.[4]Possession adverse to, and effective to bar the claim of, remaindermen is

not established by the delivery and recording of deeds of bargain and sale, with full warranty, including a declaration of seisin or right to convey, given by the life tenants, followed by an open and notorious occupancy.[5]

Adverse possession begins to run in favor of a grantee of a life tenant when a right of entry and a right of possession exist in the remainderman and not when the remainderman has a right to bring an action to quiet title as to the future interest.[6]On the other hand, where, by statute, a remainderman or reversioner has the right, prior to the death of the life tenant, to bring an action to quiet title or settle such party's interest in the property, the failure of the remainderman or reversioner to bring such action with respect to property in possession of a grantee of the life tenant under a deed purporting to cover the fee may cause the statute of limitations to run against the remainderman or reversioner prior to the termination of the life estate.[7]The same result follows where the life tenant's deed may be construed as giving color of title to the grantee under statutes permitting the acquisition of title by possession under color of title for a prescribed period.[8]The general rule that the owner of real estate by acts or conduct may be estopped to assert title thereto applies to owners of the estate in remainder, and the owner of such estate, by consenting to a sale of the fee by the life tenant, or by inducing such sale, is estopped as against a purchaser acting in good faith and without knowledge of the remainderman's title, to assert title in remainder.[9]This is especially true where the remainderman has received a part of the purchase money.[10]

Footnotes

1 Meadows v. Hardcastle, 219 Ark. 406, 242 S.W.2d 710 (1951); Ontelaunee Orchards v. Rothermel, 139 Pa. Super. 44, 11 A.2d 543 (1940).

2 Content v. Dalton, 122 N.J. Eq. 425, 194 A. 286, 112 A.L.R. 1031 (Ct. Err. & App. 1937).

3 Allen v. Wiseman, 359 Mo. 1026, 224 S.W.2d 1010 (1949); Content v. Dalton, 122 N.J. Eq. 425, 194 A. 286, 112 A.L.R. 1031 (Ct. Err. & App. 1937).

4 McDonald v. Burke, 288 S.W.2d 363 (Ky. 1955).

5 Content v. Dalton, 122 N.J. Eq. 425, 194 A. 286, 112 A.L.R. 1031 (Ct. Err. & App. 1937).

6 Maxwell v. Hamel, 138 Neb. 49, 292 N.W. 38 (1940).
As to possession of life tenant becoming adverse, see §§ 222, 223.

7 Murray v. Quigley, 119 Iowa 6, 92 N.W. 869 (1902).

8 Lewis v. Barnhart, 145 U.S. 56, 12 S. Ct. 772, 36 L. Ed. 621 (1892).

9 Knutson v. Vidders, 126 Iowa 511, 102 N.W. 433 (1905); McIntosh v. Ropp, 222 Pa. 606, 72 A. 230 (1909).

10 Knutson v. Vidders, 126 Iowa 511, 102 N.W. 433 (1905); McIntosh v. Ropp, 222 Pa. 606, 72 A. 230 (1909).

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9. Life Tenant, Remainderman, and Reversioner

§ 225. Effect of termination of particular estate; holding over

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10
West's Key Number Digest, Life Estates 8

As a general rule, the statute begins to run against a remainderman only when the remainderman's right of possession commences,[1] through termination of the prior estate,[2] such as on the death of the life tenant.[3] Where a life tenant purports to convey a fee simple title,[4] a holding over by the grantee after the death of the life tenant would, without more, be adverse to the remainderman in the absence of circumstances showing to the contrary.[5] However, where a grantee or representative of a life tenant simply holds over after the life tenant's death without asserting a claim to anything more than a life estate, possession is subordinate to and in privity with the title of remaindermen and does not become hostile after the termination of the life estate until some positive act of disclaimer is brought home to the remaindermen.[6]

One who was in adverse possession of the life estate, and who remains in possession after the death of the tenant for life, is thereafter in possession adversely to the remainderman.[7] So, if a remainderman or reversioner permits the grantee or representative of a life tenant to retain possession of the premises under claim of title after the termination of the life estate, such possession is adverse to the remainderman or reversioner.[8]

Footnotes

1 Ransom v. Bebernitz, 172 Vt. 423, 782 A.2d 1155 (2001).

2 Young v. Faulkner, 217 Ga. App. 321, 457 S.E.2d 584 (1995).

3 Beasley v. Beasley, 404 Ill. 225, 88 N.E.2d 435 (1949).

4 § 224.

5 Ontelaunee Orchards v. Rothermel, 139 Pa. Super. 44, 11 A.2d 543 (1940).

6 Ontelaunee Orchards v. Rothermel, 139 Pa. Super. 44, 11 A.2d 543 (1940).

As to when life tenant's possession becomes hostile to remaindermen, see § 222.

7 Rutledge v. Rutledge, 204 Va. 522, 132 S.E.2d 469 (1963).

8 Ontelaunee Orchards v. Rothermel, 139 Pa. Super. 44, 11 A.2d 543 (1940).

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3 Am. Jur. 2d Adverse Possession § 226

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10. Representative of Decedent's Estate, Surviving Spouse, and Heirs

§ 226. Generally; possession by executor or administrator

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Adverse possession of land by personal representative as against deceased owner's heirs or devisees, 73 A.L.R.2d 1097

The possession of a decedent's land by the personal representative is not normally adverse to the deceased owner's heirs or devisees.[1]The possession of land by an executor or administrator in such representative capacity can never become adverse to the decedent's heirs or devisees because the representative does not hold the lands personally but as the lands of the estate and, consequently, in clear recognition of the title of such heirs or devisees.[2]

Under certain conditions, however, the possession of the personal representative of an estate may be adverse.[3]Thus, an administrator or executor may under some circumstances hold adversely to the heirs or devisees.[4]If an executor or administrator repudiates the representative capacity, at least in so far as the land in dispute is concerned, and claims an independent, exclusive, and hostile right, openly and notoriously, the possession may become adverse to the heirs or devisees of the estate[5]provided the heirs or devisees have notice or knowledge of the repudiation and hostile claim.[6]The inquiry in all such cases is not whether the executor or administrator has a right by virtue of office to the possession but whether in point of fact the executor or administrator assumed such right and claimed to hold under it.[7]The validity of the claim is immaterial as its hostility to the

heirs is the important and controlling issue.[8]In some cases, where a personal representative bought estate property at a sale initiated as personal representative,[9]and in other cases where it appeared that the personal representative sold the property to one who later conveyed it back to him or her as the representative,[10]the possession was held adverse so as to give the personal representative title as against the deceased owner's heirs or devisees.

Footnotes

1 Cook v. Craft, 1952 OK 289, 207 Okla. 125, 248 P.2d 236 (1952); Howell v. Wilson, 323 S.W.2d 61 (Tex. Civ. App. El Paso 1959), writ refused n.r.e.

2 Cook v. Craft, 1952 OK 289, 207 Okla. 125, 248 P.2d 236 (1952).

3 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958); Cook v. Craft, 1952 OK 289, 207 Okla. 125, 248 P.2d 236 (1952).

4 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

5 Garcia v. Sanchez, 64 N.M. 114, 325 P.2d 289 (1958); Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

6 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

7 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

8 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

9 Reid v. Reid, 206 N.C. 1, 173 S.E. 10 (1934).

10 Oxford v. Estes, 229 Ala. 606, 158 So. 534 (1934).

3 Am. Jur. 2d Adverse Possession § 227

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§ 227. Possession by heirs or devisees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

The possession of an heir or devisee will not be deemed adverse to either an executor or administrator where the heir or devisee goes into possession claiming under the decedent as heir or devisee, or in other words, where the heir or devisee takes or maintains possession as such heir or devisee, the possession is not adverse.[1] Where, after the commencement of administration of the decedent's estate, an heir or devisee makes entry on land and sets up a hostile claim, the heir or devisee cannot acquire title by adverse possession against the executor or administrator.[2] Further, the possession of heirs is not adverse to a purchaser at an administrator's sale for the payment of debts since the heirs take subject to the payment of debts of the decedent.[3]

In some situations, however, an heir or devisee may hold possession of the decedent's lands adversely to the executor or administrator,[4] or to the decedent's creditors,[5] or to the heirs or devisees of a grantee of the decedent.[6]

Footnotes

1 Mawson v. Gray, 78 Utah 542, 6 P.2d 157 (1931).

2 Johns v. Scobie, 12 Cal. 2d 618, 86 P.2d 820, 121 A.L.R. 1404 (1939).

3 Rogers v. Johnson, 125 Mo. 202, 28 S.W. 635 (1894).

4 Mawson v. Gray, 78 Utah 542, 6 P.2d 157 (1931).

5 Ricard v. Williams, 20 U.S. 59, 5 L. Ed. 398, 1822 WL 2189 (1822).

6 Hutchinson v. Little Four Oil & Gas Co., 275 Pa. 380, 119 A. 534 (1923).

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3 Am. Jur. 2d Adverse Possession § 228

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10. Representative of Decedent's Estate, Surviving Spouse, and Heirs

§ 228. Possession as between coheirs

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5

Adverse possession of land by personal representative as against deceased owner's heirs or devisees, 73 A.L.R.2d 1097

Where an entry is made as heir and without claim of an exclusive title, it will be deemed an entry not adverse to the rights of other heirs.[1]

The possession of one coheir may become adverse to other coheirs, however, by acts or declarations repelling the presumption that the possession is in the character as coheir and clearly showing a claim of exclusive right; however, the hostile intent of the possession must be manifested by more unequivocal acts than are necessary where there is no privity between the parties.[2]Thus, one heir, notwithstanding entry as an heir, may afterward, by ouster of coheirs, acquire an exclusive possession on which the statute will run against the coheirs.[3]

Observation:

The rule that a cotenant cannot hold adversely until notification of other cotenants does not apply to a coheir whose adverse possession commenced before the decedent's death as no further act of ouster is necessary, and the heir may continue the adverse occupancy against the other heirs.[4]Thus, an adverse possession commenced before the decedent's death is not interrupted by the claimant's inheritance of a part interest in the property, and the claimant still remains in adverse possession of the other part interest as against coheirs.[5]

Footnotes

1 Ricard v. Williams, 20 U.S. 59, 5 L. Ed. 398, 1822 WL 2189 (1822).
As to adverse possession between cotenants, generally, see §§ 190 to 202.

2 Replogle v. Replogle, 350 S.W.2d 735 (Mo. 1961).

3 Ricard v. Williams, 20 U.S. 59, 5 L. Ed. 398, 1822 WL 2189 (1822).

4 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).
As to notice to cotenants of hostile holding, see §§ 195, 196.

5 Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).

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10. Representative of Decedent's Estate, Surviving Spouse, and Heirs

§ 229. Possession of grantees as against heirs

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

The owner of an estate created by a decedent or by operation of law, and taking effect on the decedent's death, does not hold adversely to the heirs.[1] Possession of real estate under an instrument that expressly excepts rights of heirs at law of a deceased person is not adverse to such heirs.[2] A possession cannot be adverse to the heirs where it is held, by virtue of marital rights, by a surviving spouse,[3] by a surviving spouse jointly with a new spouse,[4] or by anyone holding under them.[5]

Footnotes

1 Lee v. Harris, 188 Tenn. 373, 219 S.W.2d 892 (1949).

2 Fowler v. Manheimer, 70 A.D. 56, 75 N.Y.S. 17 (1st Dep't 1902), aff'd, 178 N.Y. 581, 70 N.E. 1098 (1904).

3 § 230.

4 Tennison v. Carroll, 219 Ark. 658, 243 S.W.2d 944 (1951).

5 Wilson v. Frost, 186 Mo. 311, 85 S.W. 375 (1905).

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3 Am. Jur. 2d Adverse Possession § 230

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§ 230. Possession of surviving spouse as against heirs

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Adverse Possession 4, 10

A.L.R. Library

Adverse possession between cotenants, 82 A.L.R.2d 5

It is a general rule that the possession by a surviving spouse of the deceased spouse's property by virtue of marital rights is not adverse to the heirs of the deceased spouse.[1]Moreover, during the time a widow is rightfully in possession of her husband's lands under her dower and quarantine rights, her possession is not adverse to the rights of the heirs even though she claims entire ownership.[2]Thus, unless an adverse holding of an open and notorious character is established by proof, it is generally held that the widow's possession of the house, etc., under her statutory right of quarantine, until dower is assigned, is not of itself adverse to an heir or those claiming under the heir or to the purchasers of the fee.[3]The widow's right to possession under her quarantine prevents the running of the statute of limitations against heirs until dower is assigned or until (but not after) the right to have dower assigned is barred by the statute of limitations.[4]A widow whose dower has never been assigned to her, by merely remaining in possession of property that belonged to her deceased husband, cannot acquire title by adverse possession as against the heirs.[5]

Before a widow's possession can become adverse as against the heirs of her husband, it is necessary for her to repudiate the title of her husband and to disavow any claim as his widow, and notice of disavowal of title as widow must be brought home to the heirs.[6]It is only where there is a divestiture of the dower right, as by a release to the heir or other act amounting to a relinquishment of dower, that the widow can claim possession that would be adverse and prove ownership according to the usual rules of adverse possession.[7]Even if a widow disavows homestead rights and claims as a tenant in common, her possession and occupancy are presumed to be permissive and not hostile to cotenants unless the fact of hostility affirmatively appears.[8]After the period of a widow's rightful possession of her deceased husband's property expires, her possession under a claim of ownership is adverse to the heirs.[9]

A widow in possession, with no muniment of title, may acquire a title by adverse possession against the heirs of her husband, where occupancy is open, notorious, and visible, and by acts unequivocally conveying to the heirs notice that she is holding in defiance of their title.[10]

The heirs at law of a deceased wife cannot question her husband's title to property held by her in her own right prior to her death, and which she, by a conveyance in which the husband joined, transferred to a purchaser, who, after the death of the wife, conveyed the same to the husband, where the husband has held the property, received the rents and profits, and sold and conveyed different parcels of it during a period of time longer than that limited by statute for bringing ejectment.[11]

Footnotes

1 Lee v. Harris, 188 Tenn. 373, 219 S.W.2d 892 (1949).

2 White v. Williams, 260 Ala. 182, 69 So. 2d 847 (1954); Haynes v. Strange, 232 Ark. 374, 337 S.W.2d 661 (1960).

3 Moore v. Hoffman, 327 Mo. 852, 39 S.W.2d 339, 75 A.L.R. 135 (1931).

4 Moore v. Hoffman, 327 Mo. 852, 39 S.W.2d 339, 75 A.L.R. 135 (1931).

5 Mullan v. Bank of Pasco County, 101 Fla. 1097, 133 So. 323 (1931); Lee v. Harris, 188 Tenn. 373, 219 S.W.2d 892 (1949).

6 Haynes v. Strange, 232 Ark. 374, 337 S.W.2d 661 (1960).

7 White v. Williams, 260 Ala. 182, 69 So. 2d 847 (1954).

8 Tennison v. Carroll, 219 Ark. 658, 243 S.W.2d 944 (1951).

9 Niederhelman v. Niederhelman, 336 S.W.2d 670 (Mo. 1960).

10 Mullan v. Bank of Pasco County, 101 Fla. 1097, 133 So. 323 (1931).

11 Mercer's Lessee v. Selden, 42 U.S. 37, 1 How. 37, 11 L. Ed. 38, 1843 WL 5986 (1843).